94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 94–
2d Session } { 1474 Part 1

REGULATING LOBBYING AND RELATED ACTIVITIES

SEPTEMBER 2, 1976.—Ordered to be printed

Mr. FLOWERS, from the Committee on the Judiciary, submitted the following

REPORT

together with

DISSENTING VIEWS

(Including cost estimate of the Congressional Budget Office)

[To accompany H.R. 15, which on January 14, 1975, was referred jointly to the Committee on the Judiciary and the Committee on Standards of Official Conduct]

The Committee on the Judiciary, to whom was referred the bill (H.R. 15) to regulate lobbying and related activties, having considered the same, report favorably thereon with an amendment and recomend that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert:

DEFINITIONS

That this Act may be cited as the "Public Disclosure of Lobbying Act of 1976".

SEC. 2. As used in this Act—

(1) The term "affiliate" means—

(A) organizations which are associated with each other through a formal relationship based upon ownership or an agreement (including tions maintains actual control or has the right of potential control of a charter, francise agreement, or bylaws) under which one of the organizations maintains actual control or has the right of potential control of all or a part of the activities of the other organization;

(B) units of a particular denomination of a church or of a convention or associations of churches; and

(C) national membership organizations and their State and local membership organizations or units, national trade assocations and their State and local trade associations, national business leagues and their State and local business leagues, national federations of organizations and their State and local organizations.

(2) The term "Comptroller Generl" means the Comptroller General of the United States.

76–445

(3) The term "direct business contact" means any relationship between an organization and any Federal officer or employee in which—

(A) such Federal officer or employee is a partner in such organization ;

(B) such Federal officer or employee is a member of the board of directors or similar governing body of such organization, or is an officer or employee of such organization ; or

(C) such organization and such Federal officer or employee each hold a legal or beneficial interest (exclusive of stock holdings in publicly traded corporations, policies of insurance, and commercially reasonable leases made in the ordinary course of business) in the same business or joint venture, and the value of each such interest exceeds $1,000.

(4) The term "exempt travel expenses" means any sum expended by any organization in payment or reimbursement of the cost of any transportation for any agent, employee, or other person engaging in activities described in section 3(a), plus such amount of any sum received by such agent, employee, or other person as a per diem allowance for each such day as is not in excess of the maximum applicable allowance payable under section 5702(a) of title 5, United States Code, to Federal employee subject to such section.

(5) The term "expenditure" means—

(A) a payment, distribution (other than normal dividends and interest), salary, loan, advance, deposit, or gift of money or other thing of value, other than exempt travel expenses, made—

(i) to a Federal officer or employee ; or

(ii) for mailing, printing, advertising, telephones, consultant fees, or the like which are attributable to activities described in section 3(a), and for costs attributable partly to activities described in section 3(a) where such costs, with reasonable preciseness and ease, may be directly allocated to those activities ; or

(B) a contract, promise, or agreement, whether or not legally enforceable, to make, disburse, or furnish any item referred to in subparaparagraph (A).

(6) The term "Federal officer or employee" means—

(A) any Member of the Senate or the Houe of Representatives, any Delegate to the House of Representatives, and the Resident Commissioner in the House of Representatives ;

(B) any officer or employee of the Senate or the House of Representatives or any employee of any Member, committee, or officer of the Congress ; and

(C) any officer of the executive branch of the Government listed in sections 5312 through 5316 of title 5, United States Code.

(7) The term "identification" means—

(A) in the case of an individual, the name, occupation, and business address of the individual and the position held in such business ; and

(B) in the case of an organization, the name and address of the organization, the principal place of business of the organization, the nature of its business or activities, and the names of the executive officers and the directors of the organization, regardless of whether such officers or directors are paid.

(8) The term "organization" includes any corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, national organization of State or local elected or appointed officials (excluding any national or State political party and any organizational unit thereof, and excluding any association comprised solely of Members of Congress and congressional employees), group of organizations, or group of individuals, which has paid officers, directors, or employees.

(9) The term "quarterly filing period" means any calendar quarter beginning on January 1, April 1, July 1, or October 1.

(10) The term "solicitation" means any oral or written communication directly urging, requesting, or requiring another person to advocate a specific position on a particular issue and to seek to influence a Federal officer or employee with respect to such issue, but does not mean such oral or written communications by one organization registered under this Act to another organization registered under this Act.

(11) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

APPLICABILITY OF ACT

SEC. 3. (a) The provisions of this Act shall apply to any organization which—

(1) makes an expenditure in excess of $1,250 in any quarterly filing period for the retention of another person to make oral or written communications directed to a Federal officer or employee to influence the content or disposition of any bill, resolution, treaty, nomination, hearing, report, investigation (excluding civil or criminal investigations or prosecutions by the Attorney General and any investigation by the Comptroller General authorized by the provisions of this Act), rule (as defined in section 551(4) of title 5, United States Code), rule making (as defined in section 551(5) of title 5, United States Code) or the award of Government contracts (excluding the submission of bids), or for the express purpose of preparing or drafting any such oral or written communication; or

(2) employs at least one individual who spends 20 percent of his time or more in any quarterly filing period engaged on behalf of that organization in those activities described in paragraph (1).

except that this Act shall not apply to an affiliate of a registered organization if such affiliate engages in activities described in paragraphs (1) and (2) of this subsection and such activities are reported by the registered organization.

(b) This Act shall not apply to—

(1) a communication (A) made at the request of a Federal officer or employee, (B) submitted for inclusion in a report or in response to a published notice of opportunity to comment on a proposed agency action, or (C) submitted for inclusion in the record, public docket, or public file of a hearing or agency proceeding;

(2) a communication or solicitation made through a speech or address, through a newspaper, book, periodical, or magazine published for distribution to the general public or to the membership of an organization, or through a radio or television broadcast: *Provided*, That this exemption shall not apply to an organization responsible for the purchase of a paid advertisement in a newspaper, magazine, book, periodical, or other publication distributed to the general public, or of a paid radio or television advertisement;

(3) a communication by an individual, acting solely on his own behalf for redress of his personal grievances, or to express his personal opinion;

(4) practices or activities regulated by the Federal Election Campaign Act of 1971;

(5) a communication on any subject directly affecting any organization to a Member of the Senate or of the House of Representatives, or to an individual on the personal staff of such Member, if such organization's principal place of business is located in the State, or in the congressional district within the State, represented by such Member, so long as that organization (A) acts on its own initiative and not at the suggestion, request, or direction of any other person, and (B) the costs incurred are not paid by any other person; or

(6) activities of the National Academy of Sciences conducted under section 3 of the Act of March 3, 1863 (36 U.S.C. 253).

REGISTRATION

SEC. 4. (a) Each organization shall register with the Comptroller General not later than fifteen days after engaging in activities described in section 3(a).

(b) The registration shall be in such form as the Comptroller General shall prescribe by regulation, and shall contain the following, which shall be regarded as material for the purposes of this Act—

(1) an identification of the organization and a general description of the methods by which such organization arrives at its position with respect to any issue, except that nothing in this paragraph shall be construed to require the disclosure of the identity of the members of an organization; and

(2) an identification of any person retained under section 3(a)(1) and of any employee described in section 3(a)(2).

(c) A registration filed under subsection (a) in any calendar year shall be effective until January 15 of the succeeding calendar year. Each organization required to register under subsection (a) shall file a new registration under such subsection within fifteen days after the expiration of the previous registration, unless such organization has ceased to engage in activities described in section 3(a).

RECORDS

SEC. 5. (a) Each organization required to be registered and each person retained by such organization shall maintain such records for each quarterly filing period as may be necessary to enable such organization to file the registrations and reports required to be filed under this Act. Such records shall be maintained in accordance with regulations prescribed by the Comptroller General. Any officer, director, employee, or retained person of any organization shall provide to such organization such information as may be necessary to enable such organization to comply with the recordkeeping and reporting requirements of this Act. Any organization which shall rely in good faith on the information provided by any such officer, director, employee, or retained person shall be deemed to have complied with this subsection.

(b) The records required by subsection (a) shall be preserved for a period of not less than five years after the close of the quarterly filing period to which such records relate.

REPORTS

SEC. 6. (a) Each organization shall, not later than thirty days after the last day of each quarterly filing period, file a report with the Comptroller General concerning any activities described in section 3(a) which are engaged in by such organization during such period. Each such report shall be in such form as the Comptroller General shall prescribe by regulation.

(b) Each report required under subsection (a) shall contain the following which, shall be regarded as material for the purposes of this Act—

(1) an identification of the organization filing such report;

(2) the total expenditures which such organization made with respect to activities described in section 3(a) during such period, including an itemized listing of each expenditure in excess of $25 made to or for the benefit of any Federal officer or employee and an identification of such officer or employee, but not including any contribution to a candidate as defined in section 301(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 (e));

(3) a disclosure of those expenditures for any reception, dinner, or other similar event paid for, in whole or in part, by the reporting organization for Federal officers or employees regardless of the number of persons invited or in attendance, where the total cost of the event exceeds $500;

(4) an identification of any person retained by the organization filing such report under section 3(a)(1) and of any employee described in section 3(a)(2) and the expenditures made pursuant to such retention or employment, except that in reporting expenditures for the employment or retention of such persons, the organization filing such report shall—

(A) allocate, in a manner acceptable to the Comptroller General, and disclose that portion of the retained or employed person's income which is paid by the reporting organization and which is attributable to engaging in such activities for the organization filing such report; or

(B) disclose the total expenditures paid to the retained or employed person by the organization filing such report;

(5) a description of the twenty-five issues concerning which the organization filing such report engaged in activities described in section 3(a) and upon which the organization spent the greatest proportion of its efforts, and a general description of any other issues concerning which the organization engaged in such activities;

(6) a description of solicitations initiated or paid for by such organization, and the subject matter with which such solicitations were concerned, where such solicitations reached or could be reasonably expected to reach, in identical or similar form, five hundred or more persons, or twenty-five or more officers or directors, one hundred or more employees, or twelve or more affiliates of such organization, except that this paragraph may be satisfied, with respect to a written solicitation, at the discretion of the reporting organization, by filing a copy of such solicitation;

(7) disclosure of each known direct business contact by the organization involved with a Federal officer or employee whom such organization has sought to influence during the quarterly filing period involved; and

(8) the dues or contribution schedule of the organization, and, if—

(A) an individual or organization contributes in excess of such schedule;

(B) the total income to the reporting organization from that individual or organization exceeds $2,500 in any calendar year; and

(C) such income is greater than one percent of the total dues or contributions received by the reporting organization,

the name of each such individual or organization and the amount contributed in excess of such schedule by such individual or organization: *Provided*, That nothing herein shall require the identification of an individual or organizational donor of a contribution to an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, or the corresponding provision or provisions of any future Federal revenue law.

As used in paragraph (8), the term "income" means a gift, donation, contribution, payment, loan, advance, service, salary, or other thing of value received, and a contract, promise, or agreement, whether or not legally enforceable, to receive any such item, but does not include the value of any voluntary services provided by individuals without compensation from the organization.

(c) If an organization which is required to register under this Act directs an affiliate which is not required to register to engage in a solicitation relating to an issue with respect to which such organization is engaging in any activity described in section 3(a), or reimburses such an affiliate for expenses incurred in such a solicitation, then such organization must report such solicitation as if it were initiated, or paid for, by such organization.

POWERS OF COMPTROLLER GENERAL

SEC. 7. (a) The Comptroller General, in carrying out the provisions of this Act, is authorized—

(1) to informally request or to require by subpena any individual or organization to submit in writing such reports, records, correspondence, and answers to questions as the Comptroller General may consider necessary to carry out the provisions of this Act, within such reasonable period of time and under oath or such other conditions as the Comptroller General may require;

(2) to administer oaths or affirmations;

(3) to require by subpena the attendance and testimony of witnesses and the production of documentary evidence;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person designated by the Comptroller General who has the power to administer oaths and to compel testimony and the production of evidence in any such proceeding or investigation in the same manner as authorized under paragraph (3);

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States; and

(6) to petition any United States district court having jurisdiction for an order to enforce subpenas issued pursuant to paragraphs (1), (3), and (4) of this subsection.

(b) No individual or organization shall be civilly liable in any private suit brought by any other person for disclosing information at the request of the Comptroller General under this Act.

DUTIES OF THE COMPTROLLER GENERAL

SEC. 8. (a) It shall be the duty of the Comptroller General—

(1) to develop filing, coding, and cross-indexing systems to carry out the purposes of this Act, including (A) a cross-indexing system which, for any person identified in any registration or report filed under this Act, discloses each organization identifying such person in any such registration or report, and (B) a cross-indexing system, to be developed in cooperation with the Federal Election Commission, which discloses for any such person each identification of such person in any report filed under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(2) to make copies of each registration and report filed with him under this Act available for public inspection and copying, commencing as soon as practicable after the date on which the registration or report involved is received, but not later than the end of the fifth working day following such date, and to permit copying of such registration or report by hand or by copying machine or, at the request of any individual or organization, to furnish a copy of any such registration or report upon payment of the cost of making and furnishing such copy; but no information contained in any such registration or report shall be sold or utilized by any individual or organization for the purpose of soliciting contributions or business;

(3) to preserve the originals or accurate reproductions of such registrations and reports for a period of not less than five years from the date on which the registration or report is received;

(4) to compile and summarize, with respect to each quarterly filing period, the information contained in registrations and reports filed during such period in a manner which clearly presents the extent and nature of the activities described in section 3(a) which are engaged in during such period;

(5) to make the information compiled and summarized under paragraph (4) available to the public within sixty days after the close of each quarterly filing period, and to publish such information in the Federal Register at the earliest practicable opportunity;

(6) to conduct investigations with respect to any registration or report filed under this Act, with respect to alleged failures to file any registration or report required under this Act, and with respect to alleged violations of any provision of this Act; and

(7) to prescribe such procedural rules and regulations, and such forms as may be necessary to carry out the provisions of this Act in an effective and efficient manner.

(b) For purposes of this Act, the duties of the Comptroller General described in subsections (a)(6) and (a)(7) of this section shall be carried out in conformity with chapter 5 of title 5, United States Code.

ADVISORY OPINIONS

SEC. 9. (a) Upon written request to the Comptroller General by any individual or organization, the Comptroller General shall, within a reasonable time, render a written advisory opinion with respect to the applicability of the recordkeeping, registration, or reporting requirements of this Act to any specific set of facts involving such individual or organization, or other individuals or organizations similarly situated.

(b) Notwithstanding any other provision of law, any individual or organization with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with the provisions of this Act to which such advisory opinion relates. The Comptroller General may modify or revoke any such advisory opinion, but any modification or revocation shall be effective only with respect to action taken after such individual or organization has been notified, in writing, of such modification or revocation.

(c) All requests for advisory opinions, all advisory opinions, and all modifications or revocations of advisory opinions shall be published by the Comptroller General in the Federal Register.

(d) The Comptroller General shall, before rendering an advisory opinion under this section, provide any interested individual or organization with an opportunity, within such reasonable period of time as the Comptroller General may provide, to transmit written comments to the Comptroller General with respect to such advisory opinion.

(e) Any individual or organization who has received and is aggrieved by any advisory opinion from the Comptroller General may file a declaratory action in the United States district court for the district in which such individual resides or such organization maintains its principal place of business.

ENFORCEMENT

SEC. 10 (a) If the Comptroller General has reason to believe that any individual or organization has violated any provision of this Act, the Comptroller General shall notify such individual or organization of such apparent violation, unless

the Comptroller General determines that such notice would interfere with effective enforcement of this Act, and shall make such investigation of such apparent violation as Comptroller General considers appropriate. Any such investigation shall be conducted expeditiously, and with due regard for the rights and privacy of the individual or organization involved.

(b) If the Comptroller General determines, after any investigation under subsection (a), that there is reason to believe that any individual or organization has engaged in any acts or practices which constitute a civil violation of this Act, he shall endeavor to correct such violation—

(1) by informal methods of conference or conciliation; or

(2) if such methods fail, by referring such apparent violation to the Attorney General.

(c) Upon a referral by the Comptroller General pursuant to subsection (b)(2), the Attorney General may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate relief in the United States district court for the district in which such individual or organization is found, resides, or transacts business. The Attorney General shall transmit a report to the Comptroller General describing any action taken by the Attorney General regarding the apparent violation involved.

(d) The Comptroller General shall refer apparent criminal violations of this Act to the Attorney General. In any case in which the Comptroller General refers such an apparent violation to the Attorney General, the Attorney General shall act upon such referral in as expeditious a manner as possible, and shall transmit a report to the Comptroller General describing any action taken by the Attorney General regarding such apparent violation.

(e) The reports required by subsections (c) and (d) shall be transmitted not later than sixty days after the date the Comptroller General refers the apparent violation involved, and at the close of every ninety-day period thereafter until there is final disposition of such apparent violation.

REPORTS BY THE COMPTROLLER GENERAL

SEC. 11. The Comptroller General shall transmit reports to the President of the United States and to each House of the Congress no later than March 31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Comptroller General in carrying out his duties and functions under this Act, together with recommendations for such legislative or other action as the Comptroller General considers appropriate.

CONGRESSIONAL DISAPPROVAL OF REGULATIONS

SEC. 12. (a) Upon proposing to place any regulation in effect under section 4, 5, or 6, the Comptroller General shall transmit notice of such regulation to the Congress. The Comptroller General may place such regulation in effect as proposed at any time after the expiration of ninety calendar days of continuous session after the date on which such notice is transmitted to the Congress unless, before the expiration of such ninety days, either House of the Congress adopts a resolution disapproving such regulation.

(b) For purposes of this section—

(1) continuity of session of the Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety calendar days referred to in subsection (a).

SANCTIONS

SEC. 13. (a) Any individual or organization knowingly violating section 4, 5, or 6 of this Act, or the regulations promulgated thereunder, shall be subject to a civil penalty of not more than $5,000 or each such violation.

(b) Any individual or organization who knowingly and willfully violates section 4, 5, or 6 of this Act, or the regulations promulgated thereunder, or who, in any statement required to be filed, furnished or maintained pursuant to this Act, knowingly and willfully makes any false statement of a material fact, omits any material fact required to be disclosed, or omits any material fact necessary to make statements made not misleading, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, for each such violation.

(c) Any individual or organization knowingly and willfully failing to provide or falsifying all or part of any records required to be furnished to an employing or retaining organization in violation of section 5(a) shall be fined not more than $10,000, or imprisoned for not more than two years, or both.

(d) Any individual or organization selling or utilizing information contained in any registration or report in violation of section 8(a)(2) of this Act shall be subject to a civil penalty of not more than $10,000.

REPEAL OF FEDERAL REGULATION OF LOBBYING ACT

SEC. 14. The Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.), and that part of the table of contents of the Legislative Reorganization Act of 1946 which pertains to title III thereof, are repealed.

SEPARABILITY

SEC. 15. If any provision of this Act, or the application thereof, is held invalid, the validity of the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 16. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

EFFECTIVE DATES

SEC. 17. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on the date of enactment.

(b) The authority of the Comptroller General to prescribe regulations under sections 4, 5, and 6 shall take effect on the date of the enactment of this Act. The remaining provisions of sections 4, 5, and 6 and the provisions of sections 10, 13, and 14 shall take effect on the first day of the first calendar quarter beginning after the date on which, in accordance with section 12, the first regulations so prescribed take effect.

PURPOSE

The purpose of H.R. 15, as amended, is to replace the present lobbying disclosure law with a comprehensive new statute that specifies which organizations must register as lobbyists and what information they must publicly disclose. It does not in any manner seek to regulate or prohibit lobbying itself.

It should be noted that the primary purpose of lobby disclosure legislation is not to eliminate corrupt practices or unethical behavior, which account for a relatively small percentage of lobbying activities.

Although disclosure may have a limited effect on discouraging unlawful or unethical behavior, the basic purpose of lobby disclosure is to inform the general public, including Members of Congress, of the nature and scope of activities which constitute and characterize the bulk of lobbying campaigns. Lobbyists often perform a valuable public service, but the nature of lobbying activities is too often hidden from public view. Public officials have a right (and some might argue, a duty) to know who's behind the various influences to which they are subjected on a daily basis. In addition, if the public decision-making process is to be an informed one, and if the citizenry is to properly evaluate the performance of public officials in that process, disclosure is essential.

NEED FOR LEGISLATION

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right

> of the people to peaceably assemble, and to petition the Government for a redress of grievances. U.S. Constitution Amendment I.

The right of an individual to petition the Government for a redress of grievances is fundamental to our democracy. The right to associate with others to petition the Government is equally important. Without easy and open communication between Congress and the public, Congress would be denied exposure to the information and variety of viewpoints it must have to legislate effectively. The right of individuals and organizations to petition their government is part of the very foundation of our political process.

But, as then Judge Burger, speaking for the U.S. Court of Appeals for the District of Columbia Circuit, said, "Like other constitutional rights, the right to petition is subject to abuse and misuse . . ." *Liberty Lobby, Inc.* v. *Pearson*, 390F.2d 484, 491 (1968). A democracy requires that the citizenry be free to petition the Government for a redress of its grievances, but a democracy must also insure, that these petitions themselves do not become a grievance to the public interest.

Chief Justice Warren in discussing the 1946 Lobbying Act stated:

> Present-day legislative complexities are such that individual Members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise, the voice of the people may all too easily be drowned out by the voice of the special-interests group seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent. (*United States* v. *Harriss*, 347 U.S. 612, 625 (1954).)

The House Committee on Standards of Official Conduct pointed out in a 1971 report that communication between the electorate and Congress has of necessity become more complex and institutionalized as government has responded to the needs of a growing and increasingly diverse electorate. (House Report No. 92–741.) Even with the advent of modern transportation, it is difficult for Members of Congress to have direct contact with more than a small fraction of their constituents. Communications between legislators and the electorate, as a consequence, are often accomplished through organizations. As an earlier House committee report concluded in 1951, the business of influencing legislation is dominated by group efforts." (Report of the House Committee on Lobbying Activities, House Report No. 81–3239.)

Efforts to influence Congress have, in fact, become big business. In 1950, a select House committee on lobbying activities concluded on the basis of its own research that, "If the full truth were ever known, this committee has little doubt that lobbying, and all its ramifications, would prove to be a billion-dollar industry." The total amount of money actually expended on lobbying must have significantly increased since this estimate was made in 1950. (General Interim Report of the House Select Committee on Lobbying Activities. Rept. No. 3138, 81st Cong., 2d sess., p. 8.)

The power of the modern lobbying organization may be vast. A lobbying organization can generate thousands of telegrams in a few days opposing or favoring a particular piece of legislation. With the help of sophisticated computers, it can target within a matter of hours hundreds of key individuals or organizations and solicit them to communicate with particularly influential or undecided Senators or Congressmen.

There is a strong consensus that a substantial public interest would be served by a reasonable lobbying law. Some of the reasons may be summarized as follows:

(1) Disclosure will enable Members of Congress, as they consider an issue before Congress, to understand more fully the actual nature and source of the lobbying on the issue. Pending lobbying legislation would require disclosure of the identity and nature of those persons that lobby directly. Also, Congress is continually receiving letters or other communications on particular issues. The views expressed in a particular communication are no less valid because they are generated by an organization's grassroots efforts urging citizens to write Congress. In order to judge how representative the views that it receives are of the general public as a whole, Congress should know whether such communications are the spontaneous expression of the public's feelings or whether they have been generated by the lobbying efforts of a particular interest.

(2) Disclosure will help increase public confidence in government. Many Americans are concerned about the operations of governmental institutions. There is particular concern about the responsiveness of the Government to the interests of the average citizen. A Harris poll conducted in 1975 revealed by a lopsided 72 percent to 9 percent the public feels that "Congress is still to much under the influence of special-interest lobbies." (Harris survey, April 7, 1975.)

Removing the cloak of secrecy from efforts to influence issues before Congress should improve the public's confidence in the legislative process. Unjustified suspicions of improper behavior should be removed and better appreciation gained of how Congress seeks to develop, out of competing interests, legislation that is in the public interest.

(3) Disclosure will better inform Congress and the general public as to which views are most represented before Congress, and how much money is expended to influence the outcome of matters pending before the legislative and executive branches of Government. Greater participation in the governmental process by other members of the public, including those with different views, will be encouraged.

(4) Disclosure will enhance the lobbying profession by removing the secrecy surrounding its activities. This will lead to a better understanding of the nature of the lobbying process and the role it plays in the legislative process.

The long history of continuing congressional concern with lobbying reform legislation underscores the great need for enactment of an effective lobbying law. It demonstrates that the time is long overdue for Congress to act in this area.

In 1946 the Congress passed the present lobbying disclosure law as title III of the Legislative Reorganization Act. The law was intended to cover both direct lobbying and efforts to stimulate grass-roots support or opposition to a particular issue before Congress. *United States* v. *Harris* 347 U.S. 612, 620–621 n.10 (1954).

For reasons described in greater detail in the next section, the 1946 law did not prove effective, in part because the Supreme Court opinion in *United States* v. *Harris* seriously limited the scope and effectiveness of the legislation. Soon after its passage, Congress renewed its concern over lobbying practices and the need for effective legislation. On numerous occasions since 1946, special, joint, or select committees of Congress have examined lobbying abuses and recommended either amending the 1946 law or replacing it with an entirely new act.

In 1970 the House Committee on Standards of Official Conduct recommended enactment of a new lobbying law. It concluded:

> Elementary to the consideration of any legislation is the simple question of whether any law at all is truly needed. Comparisons between the impact of lobbyists on the legislative process before 1946, when there was no law on the subject, and the improvements that followed passage of what has without exception been described to the committee as a thoroughly deficient law, lead to the conclusion that a more reasoned law will further improve the quality of our legislation. (House of Representatives. Report of the Committee on Official Standards and Conduct, 91st Cong., 2d Sess., House Rept. No. 91–1803, p. 2.)

Although Congress did not require disclosure of lobbyists' activities until 1946, most of the States had long before passed laws requiring some accountability by lobbyists. Lobbying measures are now operating in every State in the Union. Since 1972, over half of the States have enacted new lobbying disclosure laws or substantially amended older ones to make them more effective.

The witnesses who appeared during the Administrative Law and Governmental Relations Subcommittee's hearings on lobbying legislation were in full agreement that the present law was vague, ineffectual and unenforceable. A study done by the General Accounting Office found enforcement of the Act to be practically nonexistent. This conclusion has been reached by a number of congressional committees that have previously examined the effect of the present law. Among the major shortcomings of the 1946 Act are the following:

(1) Groups which utilize their own funds in an attempt to influence legislation are not required to register their efforts unless they solicit, collect, or receive funds from others for that purpose.

(2) The present law does not apply to organizations or individuals unless lobbying is their principal purpose. There is a wide disparity in the way the "principal purpose" definition is interpreted. Due to the vagueness of the definition, many organizations do not register at all, concluding that lobbying is not their "principal purpose."

(3) The present law does not cover efforts by a lobbyist which do not involve direct contact with Members of Congress. Thus, lobbyists who attempt to influence Congress by soliciting others to communicate with Congress do not have to report these grassroots lobbying efforts.

(5) In general the law's reporting requirements are so vague and ambiguous that the lobbyists who do report often file incomplete information or interpret the requirements differently. Some groups consider far more types of expenses to be related to lobbying than others. As a result, it is difficult to make a meaningful comparison between the reports filed by any two lobbyists, or to reach any overall

conclusions about the true nature or extent of the activities of those who do register.

(6) No agency of the Federal Government is given clear responsibility and adequate investigatory powers to enforce compliance with the Act.

(7) The 1946 law applies only to attempts to influence legislation. It does not cover attempts to influence decisions by the executive branch or the Federal regulatory agencies.

The result is a law which is almost totally unenforceable and which has been to a substantial degree ignored.

In its final report in 1966, a special joint committee which investigated lobbying practices concluded that current lobbying registrations "reveal only a small fraction of the money paid and received for lobbying activities." (Final Report of the Joint Committee on the Organization of the Congress, 89th Cong. 2d Sess., Senate Rept. No. 1414, P. 52).

As serious as any other weakness in the 1946 Act is the legislation's failure to assign specific responsibility for enforcing its provsions. While registration statements and quarterly reports must be filed with the Secretary of the Senate and the Clerk of the House, these officials have no mandate to monitor compliance. Moreover, the Justice Department which can prosecute violations of the Act is not required to initiate on its own investigations of possible violations of the Act.

In April 1975, a General Accounting Office study concluded that during a particular quarterly filing period studied by the agency, 48 percent of the reports filed were incomplete and 61 percent were received late. The largest proportion of incomplete answers related to the questions seeking specific financial information. The General Accounting Office report found that between March 1972 and February 1975 only five lobbying complaints had been referred to the Justice Department. Only one successful prosecution has been brought for failing to register in the last 30 years.

Summary of Lobbying Disclosure Act of 1976

H.R. 15, as amended, can be subdivided into several relevant parts to facilitate analysis of the purposes and effects of the bill. This subdivision may be made as follows: applicability of the bill; registration and reporting requirements; and administration and enforcement of the law by the General Accounting Office and the Department of Justice, respectively.

Applicability of the bill

The bill as drafted would require organizations which attempt to influence the content or disposition of certain matters pending before both the legislative and executive branches of the Federal Government to reigster and report as lobbyists. For purposes of this bill, to qualify as a lobbyist an organization must have paid officers, directors or employees. Individuals acting on their own do not have to register or report under this bill. Likewise, *ad hoc* volunteer groups or other organizations which do not have any paid officers, directors or employees, or who do not reimburse any member of such group for other than exempt travel expenses (as defined in section 2(4) of the bill) cannot be required to register or report as a lobbyist. Thus, cover-

age under this bill is tied to the expenditure of money for purposes of influencing the decision-making process of the Federal Government.

An organization which does have paid officers, directors or employees may become a lobbyist in either of two ways:

(1) it it retains a law firm, consulting firm, or other independent contractor, or an individual who is not otherwise an employee of the retaining organization, but the organization must pay the retained individual or organization in excess of $1,250 in any calendar quarter for lobbying on behalf of the retaining organization;

(2) if the organization engages in lobbying activities through its own employees, then to qualify as a lobbyist, the organization must employ at least one individual who spends twenty percent of his or her time on a quarterly basis engaged in lobbying or in preparing or drafting lobbying communications. The lobbying must be done by paid officers, directors or employees of the organization. Even if a group does have paid personnel it would not be a lobbyist under this bill if the actual lobbying on behalf of the organization was conducted by volunteers.

It is the intent here that only the orgnanization on whose behalf lobbying activities are conducted will be required to register and report. In other words, a consulting firm, law firm or other independent contractor which engages in lobbying activities on behalf of its clients rather than on its own behalf would not have to register or report under this bill. It should be noted that solicitations or so-called "grassroots" lobbying is not a threshold for becoming a lobbyist. However, once an organization meets the above listed criteria for becoming a lobbyist, then some disclosure as to solicitations is required.

Under the bill, lobbying activities include efforts to influence the contents or disposition of any bill, resolution, treaty, nomination, hearing, report, investigation, ex parte communication in a rule making proceeding, or the award of Government contracts. However, when considering the extent of coverage provided by the bill for the lobbying by organizations of executive branch officials, it is important to recognize that only attempts to influence those executive officials listed in sections 5312 through 5316 of title 5, United States Code, are to be covered.

The bill expressly excludes the following from its coverage:

(1) A communication made at the request of a Federal officer or employee, or submitted for inclusion in the record of a rule making proceeding or hearings;

(2) A communication or solicitation [1] other than a paid advertisement made through a speech, address, newspaper, book, periodical, magazine, or through a radio or television broadcast; [2]

(3) A communication by an individual acting on his own behalf for the redress of his personal grievances, or to express his personal opinion;

(4) Practices or activities regulated by the Federal Election Campaign Act of 1971;

---

[1] The term "solicitation" means any oral or written communication directly urging, requesting, or requiring another person to advocate a specific position on a particular issue and to seek to influence a Federal officer or employee with respect to such issue, but does not mean such oral or written communications bp one organization registered under this Act to another organization registered under this Act.

[2] It should be noted that this exemption extends to an organization's communications or solicitations made to its own membership in the manner described in subsection 3(b)(2).

(5) Communications between an organization and the two Senators or the Representative who represents the congressional district wherein such organization maintains its principal place of business so long as the organization acts on its own initiative and not at the suggestion, request or direction of any person, and so long as the costs incurred in making such communications are not paid for or reimbursed by any organization; and

(6) Activities of the National Academy of Sciences.

Registration and reporting requirements

Within 15 days of becoming a lobbyist, an organization must register with the Comptroller General. This registration must be renewed in January of each succeeding year.

The registration would require an organization to identify itself and to provide a description indicating the general method by which it reaches a decision to engage in lobbying. Furthermore, the registration would call for the disclosure of those persons employed or retained to engage in substantial lobbying activities on behalf of such organization.

Any organization which becomes a lobbyist must file a quarterly report with the Comptroller General within 30 days after the end of each quarterly period in which the lobbying activities exceed the threshold levels established in section 3 of the bill. If a registered lobbyist's activities in any quarter do not exceed these minimum levels, it will not have to file a report for that quarter. Each such report must disclose the following information:

(1) the organization's identification;

(2) the total expenditures made by the organization for lobbying activities for that quarterly filing period, including an itemized listing [3] of each expenditure in excess of $25 made for the benefit of a Federal officer or employee; [4]

(3) a disclosure of expenditures for any dinner, reception, or other similar event for Federal officers or employees which is paid for in whole, or in part, by the reporting organization where the total cost of such event exceeds $500;

(4) an identification of those persons retained or employed [5] by the organization to engage in lobbying on behalf of such organization and the amount of their remuneration for such activities;

(5) a description of the twenty-five isues upon which the organization spent the greatest proportion of its lobbying efforts during the quarterly filing period, together with a more generalized description of any other issues upon which the organization lobbied.

(6) a description of each solicitation (as defined in section 2(10)) initiated or paid for by the organization but only if the solicitation is directed to 500 or more persons, twenty-five or more officers or directors, 100 or more employees, or 12 or more affiliates of the organization;

(7) a disclosure of each known direct business contact [6] between the

---

[3] This itemized listing is to include an identification of the Federal officer or employee receiving the benefit of such expenditure.

[4] This provision does not pertain to contributions made to a candidate as defined in subsection 301(e) of the Federal Election Campaign Act of 1971 (2 USC 431(e)).

[5] The only employees required to be included in the report are those organizational employees which spend a minimum of 20 percent of their time on a quarterly basis engaged in lobbying activities; and only those retained persons who are paid $1,250 during the quarterly filing period for lobbying must be so identified.

[6] The term "direct business contact" is defined in subsection 2(3) of the bill.

organization and any Federal officer or employee which it has lobbied; and

(8) the dues or contributions schedule of the organization, and the identity of any contributor to the organization which contributes in excess of $2,500 during the calendar year where such contribution is in excess of one percent of the total dues or contributions received by the reporting organization and is in excess of such dues or contributions schedule, together with the amount contributed in excess of such schedule by such organization or individual.

Each registered organization as well as each independent contractor retained to engage in those activities described in subsection 3(a) on behalf of the registered organization are responsible for maintaining records which are necessary to insure compliance with the registration and reporting requirements of the bill for a period of at least five years.

Administration and enforcement

The General Accounting Office will have the responsibility for administering the new law. To carry out its responsibilities, the Comptroller General is given rule making authority and investigative powers subject to the procedural safeguards of the Administrative Procedure Act.[7] (5 USC § 551–560). However, to insure that this rule making authority is not abused, the usual congressional veto provision has been incorporated into the bill.

To aid compliance with the law, the Comptroller General is given the authority to issue advisory opinions. Subsection 9(e) provides that any person who receives an adverse advisory opinion may file an action for declaratory judgment in Federal district court.

Section 11 of the bill requires the Comptroller General to report annually to both the President and the Congress as to his activities in administering the new law, together with his recommendations for appropriate legislation relating to the disclosure of lobbying activities.

The Comptroller General is empowered to conduct investigations into apparent violations of this Act. If, after such investigation, he ascertains that any organization or individual has engaged in activities which constitute a civil violation of the Act, he may seek to correct the situation by informal methods of conference and conciliation. If such procedures fail, the Comptroller General must refer the matter to the Attorney General. All apparent criminal violations must be immediately referred to the Attorney General.

It is important to note that the formal enforcement authority under this bill rests in the Department of Justice. However, in all cases referred by the Comptroller General to the Attorney General, the Department of Justice is obligated to periodically report back to the Comptroller General on the status of such referred cases until they are finally resolved.

Both civil and criminal penalties are provided within the bill. The maximum fines range from $5,000 to $10,000 depending upon the nature of the violation, while the maximum prison sentence which may be imposed for a willful and knowing violation shall not exceed two years.

---

[7] The Administrative Procedure Act currently does not apply to the General Accounting Office.

Section-by-Section Analysis

Section 2—Definitions

Section 2 defines eleven terms used in the bill:

(1) "affiliate" is defined to mean any organization which is formally associated with another organization whereby one such organization maintains actual control or has the right of potential control over all or part of the activities of the other organization. The key to this relationship is the element of control. However, the Committee recognizes that organizational operating structures vary significantly from one type organization to another. In an effort to fairly deal with this problem, the Committee has determined to include units of a particular religious denomination as well as state and local members or units of national membership organizations, and organizations which are members of national trade associations, business leagues and labor organizations or federations within the definition of affiliate. By so doing the Committee has brought within the scope of this definition national organizations which are centrally organized or incorporated but whose members, from a functional standpoint, are really decentralized local affiliates of such national organization.

On the other had, loose *ad hoc* alliances between independent but like-minded organizations are not included. Likewise, an individual cannot be an affiliate.

(2) "Comptroller General" means the Comptroller General of the United States.

(3) "direct business contact" is defined to include any relationship between a Federal officer or employee and an organization required to register under this bill wherein the Federal officer or employee is a partner, officer, director or employee, or holds a legal or beneficial interest in the organization where such interest exceeds $1,000. However, it should be noted that stock holdings in publicly traded corporations, insurance policies, and commercial leases executed in the normal course of business on terms no more favorable than available generally at the time such lease was executed have been expressly excluded from this definition. This definition relates to the reporting provision in subsection 6(b)(7) and is intended to disclose potential conflict of interest situations between a lobbyist and a Federal officer or employee. The Committee feels that the factors excluded from the definition would be very unlikely to create a true conflict of interest situation. On the other hand, if such factors were to be included in the definition, the information could be misleading to the public and could raise doubt and suspicion where there was no rational basis for such.

(4) "exempt travel expenses" are limited under this definition to travel expenses which do not exceed the actual cost of transportation, plus a per diem allowance that does not exceed the standard amount payable to Government employees under 5 USC 5702 (a).

(5) "expenditure" is defined to mean the payment, gift or loan of anything of value to a Federal officer or employee. However, the payment or distribution of normal dividends or interest is not to be included within the scope of the term. Such distributions which are made in the normal course of business are not sufficiently related to the lobbying costs incurred by an organization as to require disclosure. Furthermore, such disclosures would require organizations to know

the occupations of its stockholders and investors, and would constitute an almost insurmountable administrative burden for such organizations.

The term is to include salaries of employed persons and payments to retained persons to the extent that such salaries and payments are attributable to those activities described in subsection 3(a) as well as costs for mailing, printing, advertising, telephones, consultant fees or the like which are directly related to such activities. Likewise, any contract or promise to pay, disburse or furnish such items for the aforementioned purposes, whether or not legally enforceable, comes within the purview of this definition. However, the Committee does not intend that an organization's costs for other general operating expenses (i.e. office equipment, basic utilities and monthly rental or mortgage payments) be included within the scope of this definition.

For purposes of determining in which quarterly filing period an expenditure is to be reported, the period under the organization's normal accounting procedures should be selected.

(6) "Federal officer or employee" means any Member, Delegate, Resident Commissioner, officer or employee of the Congress, and any officer of the executive branch of the Government listed in sections 5312 through 5316 of title 5, United States Code. The officers enumerated in the aforementioned sections of the United States Code are those political appointees listed in the executive schedule as levels I–V.

(7) "identification" is a term used throughout the bill to refer to both organizations and individuals, and includes a description of what will be required in each instance.

(8) "organization" is defined to include corporations, companies, foundations, associations, labor organizations, groups of organizations or groups of individuals with paid officers, directors or employees. The key principle here is that to qualify as an organization it must have paid officers, directors or employees. Consequently, an *ad hoc* coalition of unpaid persons cannot qualify as an organization. Further, the reimbursement or payment for exempt travel expenses, as defined in subsection 2(4), will not suffice to bring such a group within the definition of this term.

Federal, state and local governments are not organizations, nor are national or state political parties, or groups of Congressmen or congressional employees. However, the Committee clearly intends that national associations of state or local elected or appointed officials, such as the National Governors' Conference or the United States Conference of Mayors, shall fall within the scope of this definition.

During the course of public hearings, the Committee heard testimony regarding how the proposed bill may impact on organizations classified under subsection 501(c)(3) of the Internal Revenue Code. This classification is limited to nonprofit "corporations, and any community chest fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals." The section which confers tax-exempt status on certain qualifying organizations describes as one of its qualifications, the following limitation on lobbying:

76-445—76——3

> No substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in or intervene in any political campaign on behalf of any candidate for any public office.

The testimony offered to the Committee by several public charities, and related organizations, indicated that the term "substantial" has never been defined. The immediate danger perceived by these organizations is that, because the term "substantial" is not defined, there would be grounds for challenging or denying the right of that organization to maintain its tax-exempt status. These organizations further testified that under the proposed legislation the filing of lobbying reports could further increase the uncertainties charitable organizations face when IRS makes determinations regarding the tax status of groups classified under subsection 501(c)(3).

Nevertheless, the Committee intends that such organizations should be subjected to coverage under this bill. Care has been taken to establish reasonably high thresholds for becoming a lobbyist in the first place. In the second place, the mere requirement that an organization register as a lobbyist will not serve as the sole basis for denying an organization its tax exempt status.[8]

Thirdly, it should be noted that the Congress is currently considering legislation which would provide clearer guidelines as to what constitutes "substantial" lobbying activities for purposes of determining an organization's tax status.[9] When these three factors are considered together, the Committee feels that no real problems are created for such organizations.

(9) "quarterly filing period" means any calendar quarter beginning on January 1, April 1, July 1, or October 1.

(10) "solicitation" means an oral or written communication made on behalf of an organization which directly urges, requests or requires someone else to advocate a specific position on a particular issue in order to influence a Federal officer or employee. A direct communication to a Federal officer or employee is not a solicitation. This concept is aimed at obtaining the disclosure of information regarding a registered organization's indirect, grassroots lobbying efforts to be provided in the organization's quarterly report. See subsection 6(b)(6). However, the Committee rejected the idea of making solicitations (i.e. such indirect, grassroots activity) a threshold for determining which organizations must register and report. Rather, under the Committee bill, once an organization meets the coverage test in subsection 3(a), it then and only then must report about certain solicitations.

However, the definition does not include oral or written communications by one organization registered under this bill to another organization which is also registered under the bill. The Committee feels that since the registered organization which received such a solicitation would have to report on its lobbying activities in response to said solicitation, it would not be necessary to require the registered organization making the solicitation to report thereon. The key lobbying activity will still be disclosed to the public.

---

[8] See letter from the Chief Counsel of the Department of the Treasury. Hearings on H.R. 15 before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 94th Cong., 1st Sess., ser. 22, at 996–997 (1975).

[9] H.R. 13500.

Articles in an organization's newsletter or paid advertisements, for example, which merely seek to inform their readers about pending legislative and executive matters described in subsection 3(a) would not constitute solicitations. But, if in addition to informing its readers, a paid advertisement directly requests its readers to communicate a stated position on an issue to a Federal officer or employee, it would then be a solicitation.

(11) "State" is defined to mean any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

Section 3—Applicability of Act

Section 3 establishes which organizations will be required to register and report as lobbyists. Coverage is limited to organizations. Individuals are not required to register or report under this Act.

Subsection 3(a)(1)

This subsection serves a twofold purpose. First, it sets forth exactly what activities are to be included within the purview of the bill. Second, it provides as a minimum threshold or "trigger" any expenditure in excess of $1,250 for any quarterly filing period for the retention of another person, such as a law firm, consulting firm or other independent contractor, or of an individual who is not otherwise an employee of the retaining organization, to engage in those activities covered by the bill. The Committee intends that this $1,250 threshold be construed as an aggregate expenditure test. In other words, if an organization spends $800 and $500 respectively for the retention of two different persons during a single quarterly filing period to lobby on its behalf, then the expenditure test will have been met and the organization must register and report as a lobbyist. If an organization fails to spend more than this minimum threshold amount for those stated purposes, then it cannot become a lobbyist under this subsection. For example, if an organization retains a specific law firm or consultant to undertake a variety of activities, coverage is extended only where the value of the lobbying activities exceeds the $1,250 threshold, irrespective of the total amount of the retainer involved.

As previously indicated, this subsection also specifies what activities will result in the requirement that an organization register and report under the bill. The Committee intends that an organization cannot become a lobbyist unless it exceeds either the minimum threshold established for retained persons by this subsection or that set forth in subsection 3(a)(2) for organizational employees. In addition, it cannot become a lobbyist unless it attempts to influence the content or disposition of a bill, nomination, hearing, report, rule or rule making, the award of Government contracts (excluding the submission of bids), an investigation (excluding civil or criminal prosecutions or investigations by the Attorney General and any investigation by the Comptroller General authorized by the provisions of this bill), or expenditures of money (under this subsection) or time (under subsection 3(a)(2)) for the express purpose of preparing or drafting oral or written communications which are intended to influence Federal officers or employees.

The language in this subsection covering work done "for the express purpose of preparing or drafting any such oral or written com-

munication" is intended to apply directly to the preparation of oral or the drafting of written communications covered by subsection 3(a). Accordingly, to come within the scope of this language, the preparatory or drafting activty must have been commissioned or undertaken for the express purpose of making a covered communication with the knowledge and intention that the materials thus produced would be for such use.

The Committee believes that work performed in preparation of such oral or written communications is integral to the lobbying process and frequently accounts for as great a proportion of time and money expended for lobbying as does the actual "contact" work itself. However, it is not the Committee's intent to reach beyond those activities which are directly related to the lobbying process. This section is not intended to cover background research done in the normal course of business by an organization. Thus, the work performed in the preparation of factual reports on governmental developments, analyses of issues pending before the executive or legislative branches, or research of a legal, economic, technical or scientific nature would not be included unless such work was performed for the express purpose of preparing or drafting covered communications. The fact that such reports, analyses or research materials may ultimately serve as background for the persons making such communications or may be incorporated by reference, citation or quotation in such communications would not bring them within the purview of subsection 3(a) unless such materials were prepared specifically for use in the preparation or drafting of such communications. However, it is intended that time or money expended in reviewing reports, analyses, etc., not originally created for those purposes described in subsection 3(a), for the purpose of including part or the whole of such materials in a covered communication will be covered by the bill, even though the original expenditures for creating those materials would not be covered.

In order to maintain a clear perspective as to the extent of the activities covered under this bill, especially in areas affecting the executive branch, it is necessary to read subsection 3(a) in conjunction with subsection 3(b) which provides certain express exemptions from coverage. For example, subsection 3(b)(1) has the practical effect of limiting coverage in the rule or rule making area to *ex parte* communications by an organization to a Federal officer or employee. Here again, it is important, when considering communications directed to executive branch personnel, to keep in mind exactly which Government personnel are included in the term "Federal officer or employee" (as defined in subsection 2(6)). Only those executive branch personnel listed in sections 5312 through 5316 of title 5, United States Code, are included. Thus, an organization which involves itself in attempting to influence the award of Government contracts would become subject to the registration and reporting requirements of this bill only if it directed its activities to those listed Federal officers or employees. Also, it should be noted that coverage relating to Government contracts is aimed only at those activities of an organization which are designed to influence the award of a specific contract. The Committee does not intend to require that a company keep track of routine sales contacts made in the normal course of business where the discussion merely focuses on a company's general performance capabilities rather than

upon the award of a particular contract. Once a contract has been awarded, it is not the intent of this legislation to regulate or require disclosure of the necessary communications between an organization to which the contract was awarded and the Federal officials responsible for administering the contract until it is fully performed.

Subsection 3(a)(2)

This subsection establishes the second of the two minimum threshold levels which if exceeded will require an organization to register and report under the bill. Subsection 3(a)(1) established the threshold for retained persons not otherwise employees of the retaining organization. This subsection is designed to create a minimum coverage level below which an organization will not be required to register or report for the lobbying activities of its own employees. To be covered under this test an organization would have to employ at least one individual who spends twenty percent or more of his or her time in any quarterly filing period engaged on behalf of the employing organization in those activities described in subsection 3(a)(1).

The Committee recognizes that there might be some concern as to the method of computing whether an organization employs an individual who spends twenty percent of his or her time engaged in lobbying activities on behalf of the employing organization. While the twenty percent test is to be applied on a quarterly basis, for computation purposes, the time of an employee should be based upon a normal five day week. Thus, for an organization to be covered by this subsection, it would have to have at least one full or part-time employee spend the equivalent of one day a week or approximately thirteen days in a quarterly filing period engaged in lobbying.

Finally, this subsection provides an alternative for those organizations which engage in a coordinated lobbying effort with their affiliates. Under this subsection, even if an affiiliate engages in the aforementioned lobbying activities, such activities would not be reportable by the affiliate if they are, in fact, reported by the registered "parent" organization. Pursuant to this provision, the option is given to the registered national organization whether it or the affiliate will report as to the lobbying activities of the affiliate. It should be noted that this option does not come into play unless the affiliate's lobbying activities exceed the minimum thresholds established by this subsection. Thus, if the affiliate's lobbying efforts fail to exceed either such threshold, neither the registered "parent" organization nor the affiliate need report the activities of the affiliate.

This subsection differs from subsection 6(c) in that the latter deals with the situation where a registered organization directs an unregistered affiliate to solicit others. Subsection 3(a) deals with the situation where the affiliate communicates directly with a Federal officer or employee. Consequently, there is no direct overlap between the two subsections.

Subsection 3(b)

This subsection creates certain express exemptions to coverage under the bill.

Paragraph (1) provides that communications (A) made at the request of a Federal officer or employee, (B) submitted for inclusion in a report or in response to a published agency action, or (C) sub-

mitted for inclusion in the record, public docket, or public file of a hearing are to be exempted from coverage. This exemption includes testimony before a Congressional Committee or in a Federal agency hearing so that there would be no interference with the information gathering process of the Federal Government. This exemption was judicially recognized in an interpretation of the current Federal Regulation of Lobbying Act. See *U.S.* v. *Slaughter*, 89 F. Supp. 876 (1950). Any response to a notice requesting comments under the Administrative Procedure Act (5 USC § 553) would also be an example of exempted activity under this paragraph. Furthermore, the time expended in preparing or drafting such communications is not intended to be included in the computation of the twenty percent test provided in subsection 3(a)(2).

Paragraph (2) exempts communications or solicitations made through a radio or television broadcast, or through a newspaper, book, periodical, or magazine published for distribution to the general public or to the membership of an organization. The Committee is concerned that any attempt to regulate lobbying activities under this bill should not infringe upon the First Amendment rights of free speech and a free press. This is especially true where the communications are not directly made to Federal officers or employees. The Committee does not want to inhibit or interfere with an organization's ability to communicate with its own membership or employees. However, this exemption does not extend to the purchase of paid advertisements in the aforementioned media which are distributed to the general public.

Paragraph (3) provides that communications by an individual acting solely on his own behalf to express his personal opinion or to redress a personal grievance are not considered lobbying communications. It is a basic principle of the bill that only communications or solicitations made on behalf of an organization are covered. An individual who is an officer, director or employee of an organization should not be presumed to be speaking on behalf of his organization in every instance. He is entitled as an individual citizen to express his views on many matters which are of no interest to his organization. However, it is not intended that this exemption create a loophole for employees acting on behalf of their employing organization.

Paragraph (4) exempts those practices or activities regulated by the Federal Election Campaign Act of 1971, as amended.

Paragraph (5) exempts communications by an organization on any subject which are directed to the two Senators or the Representative which represent the State and the congressional district, respectively, where such organization maintains its principal place of business, provided that the communicating organization is acting solely upon its own initiative (i.e. "not at the suggestion, request, or direction of any other person"), and that the costs incurred in making such communications are not paid for or reimbursed by any other individual or organization. Likewise, this exemption extends to communications to the personal staff of any such Member. If an organization contacts the aforementioned officials as the result of a solicitation, such communications are not exempt and must be considered in computing whether such organization had exceeded the threshold levels established in subsection 3(a) for lobbying activities.

Paragraph (6) expressly exempts the activities of the National Academy of Sciences. The Academy is a private corporation which has been federally chartered (36 USC 251–254) to investigate, examine, experiment and report upon any subject of science or art at the request of the various governmental agencies.

This exemption should not be construed to mandate either the inclusion or exclusion of any other federally chartered private organization, merely because they are not expressly exempted. To the extent that such organizations provide information to the Government at the request of Federal officers or employees, they are to be exempted from coverage pursuant to subsection 3(b)(1). Furthermore, the Committee does not intend to imply by this exemption that wholly owned government corporations, as defined in 31 USC 846, come under the coverage of this bill.

ADDITIONAL EXEMPTIONS

Although subsection 3(b) provides express exemptions from coverage under the bill, it is also important to note that certain implicit exemptions exist in the bill. First, coverage does not include a communication which simply seeks to determine the status or subject matter of an issue before the executive or legislative branches of Government. Such communications are excluded because they are entirely informational. They are not intended to have any influence on the issue. However, the Committee does not intend that this implicit exemption should be utilized as a subterfuge for advancing an organization's position on an issue under the guise of an inquiry as to the status or subject matter of a pending issue.

A second such exemption governs communications or solicitations made by an officer or employee of the executive or legislative branches of the Federal Government acting in his official capacity. Such officers and employees do not meet the definitional requirement of the term "organization" and consequently do not fall within the purview of this bill. The Committee recognizes that direct communications between the Congress and the various executive agencies are necessary for the orderly operation of the Government. This is not intended in any way to imply that it is lawful for executive branch officials to engage in lobbying communications which are otherwise prohibited by section 1913 of title 18 of the United States Code governing the lobbying of the Congress with appropriated monies. Likewise, state and local officials and the direct employees of such governmental units are not covered under the definition of "organization".

Similarly, communications or solicitations by, or on behalf of, a candidate for political office made in his or her capacity as a candidate for such office, or by a political party or organizational unit thereof regarding its activities, policies, statements, programs or platforms are not within the scope of this bill.

Finally, it should be pointed out that this bill does not extend its coverage to adjudicatory proceedings governed by the provisions of the Administrative Procedure Act.[10]

[10] 5 USC 551(7); 5 USC 554; 5 USC 556–557.

Section 4—Registration

Section 4 specifies the material that an organization must include in its lobbying registration form and establishes the period for which such registration shall remain in force.

Subsection 4(a)

This subsection requires that each organization shall file a lobbying registration form with the Comptroller General not later than fifteen working days after engaging in those activities described in subsection 3(a). However, the intent here is that no such registration is required until the minimum thresholds established in paragraphs 3(a)(1) and 3(a)(2), respectively, have been exceeded.

Subsection 4(b)

Subsection 4(b) provides the Comptroller General the authority to devise the registration forms. The extent of the substantive information to be required in these forms has been provided in paragraphs (1) and (2) of this subsection.

Paragraph (1) requires each lobbying organization to identify itself. This identification must include the name of the organization, its address, principal place of business, nature of its business of activities, and the names of the executive officers and directors of the organization, regardless of whether such officers or directors are paid. This paragraph would also require a registering organization to provide a general description of the methods by which such organization arrives at a decision to engage in lobbying. This description need not include details of intra-organizational communications. Rather, a general description of the lines of organizational authority will be sufficient.

Paragraph (2) calls for the identification of any person retained as an independent contractor to engage in those activities described in subsection 3(a)(1) and for the identification of those employees described in subsection 3(a)(2). Again, the intent here is to require only the identification of those persons who exceed the thresholds set forth in subsection 3(a).

Subsection 4(c)

A registration filed pursuant to subsection 4(a) shall remain in full force and effect until January 15 of the succeeding calendar year. This registration must thereafter be renewed on an annual basis unless such organization has ceased to engage in those activities described in subsection 3(a).

Section 5—Records

Section 5 establishes who will be responsible for maintaining records pursuant to this bill and the period for which such records must be retained.

Subsection 5(a)

Each registered organization as well as each independent contractor retained to engage in those activities described in subsection 3(a) on behalf of the registered organization are responsible for maintaining those records which are necessary to insure compliance with the registration and reporting requirements of the bill. In addition any officer, director or employee of the registering organization although not individually required to maintain records, must provide

to the registering organization such information that he or she possesses as may be necessary to enable the organization to comply with the recordkeeping and reporting provisions of this bill. Likewise, in those situations where a registered organization opts to report as to the lobbying activities of its affiliates pursuant to subsection 3(a), such affiliates shall be responsible for maintaining such records as are necessary to enable the registered organization to fully discharge its reporting obligations as they pertain to such affiliates.

It is not the intent of this secion, however, to force an organization to change the manner in which it keeps its books, or to force it to keep a complete second set of financial records solely for purposes of this bill. While the Comptroller General is given the responsibility for determining by regulation which records must be maintained, it is anticipated that any regulations so promulgated will be consistent with the above expressed intent. The Committee wants adequate records to be maintained, but it does not wish to impose unnecessary recordkeeping burdens such as the logging of telephone calls or in-person appointments upon those required to maintain those records.

An organization which in good faith relies upon the information provided by its officers, directors, employees, or retainees concerning their lobbying activities on behalf of the organization shall be deemed to have complied with this subsection. It should be noted that subsection 13(c) provides civil and criminal penalties for the knowing and willful failure to provide, or the falsification of, such information by an organization's officers, directors, employees, or retainees.

Subsection 5(b)

This subsection mandates that the records required pursuant to subsection 5(a) be preserved for a period of not less than five years after the close of the quarterly filing period to which such records relate. The rationale in selecting this five year period is to make the records retention period correspond to the maximum statutory period for prosecutions under the law (18 USC § 3282).

Section 6—Reports

This section delineates what information must be included by a registered lobbying organization in its quarterly reports.

Subsection 6(a)

Subsection 6(a) provides that within thirty days after the close of any quarterly filing period in which its lobbying activities qualify it as a lobbyist, an organization must file a report with the Comptroller General covering the organization's lobbying activities during that quarterly period. Though an organization registers and reports as a lobbyist in one quarter, it must file in subsequent quarterly periods only if its lobbying activities are actually sufficient to qualify it as a lobbyist under subsection 3(a). Where a registered organization's activities in a particular quarter do not meet any of the tests established in subsection 3(a), the organization need not file a report for that quarter. An organization's activities during a quarter may make it a lobbyist for that quarter under more than one of the paragraphs in subsection 3(a). In such a case, the organization will be expected to provide the information required by each subsection applicable to its activities.

76-445—76——4

Subsection 6(b)

This subsection sets forth the reporting requirements to be included in an organization's quarterly report.

Paragraph (1) calls for an identification of the organization filing the report. As in the notice of registration, this identification would include the name of the organization, its address, principal place of business, the nature of its business or activities, and the names of the executive officers and directors of the organization, regardless of whether such officers or directors are paid. See subsection 2(7).

Paragraph (2) calls for the disclosure of the total expenditures which an organization makes as a result of engaging in those activities described in subsection 3(a) during the quarterly filing period. This requirement would mandate the disclosure of lobbying related expenditures including costs for mailing, printing, advertising, telephones, consultant fees, gifts or other expenditures made to or for the benefit of Federal officers or employees, related research fees, and salaries where such costs with reasonable precision and ease may be directly allocated to those lobbying activities. In making any such allocation, the Committee realizes that it will be difficult for many organizations to calculate a mathematically precise figure representing the organization's total lobbying expenditures. Consequently, a good faith estimate which can be documented as reasonably accurate will satisfy this requirement.

However, the Committee recognizes that subsection 6(b)(2), if improperly interpreted, could cause much needless paperwork on the part of both private organizations and the General Accounting Office. For example, it is not intended that the subsection should embrace every employee who might make a single telephone call to a Federal officer or employee, or every situation where an employee of a registered organization might discuss a pending issue during a single casual contact at a social occasion with a Federal officer or employee.

The Comptroller General, in issuing practical and enforceable regulations under subsection 6(b)(2), should take into account the situations described above. The Committee believes the Comptroller General should establish a reasonable level for such incidental expenditures. In order to avoid recordkeeping and reporting on minor and peripheral activities, organizations should not be expected to include incidental expenditures below this level in fulfilling the requirements of subsection 6(b)(2). Finally, it should be noted that those expenses incurred as a result of those activities exempted from coverage in subsection 3(b)(1) are not required to be disclosed by this paragraph.

This paragraph also calls for an itemized listing of each expenditure in excess of $25 made to or for the benefit of any Federal officer or employee. Such listing shall include an identification of the recipient officer or employee. It should be noted that the $25 itemization requirement is not an aggregate expenditure provisions, and does not come into play unless there is at least one lump sum expenditure made on behalf of the Federal officer or employee which exceeds $25.

In the case of dinners, lunches, and other expenditures in connection with informal social gatherings, the organization only need be concerned with the actual expenditure made on behalf of the Federal officer or employee. It does not include the corresponding expenses of the organization's employee or agent or other guests of the organization.

The provisions of this subsection apply to gifts, honoraria, and loans to the extent that they are provided on terms more favorable than available generally. Likewise, gifts, loans or honoraria made indirectly as well as directly to a Federal officer or employee are covered. Thus, where a Federal officer and his wife are taken to dinner by a lobbyist, the combined cost of the dinner for the Federal officer and his wife must be applied to the $25 itemization requirement. This provision notwithstanding, contributions to a candidate for Federal office (as defined in section 301(e) of the Federal Election Campaign Act of 1971) are not covered by this bill.

Paragraph (3) requires the disclosure of those expenditures by an organization for any dinner, reception of similar event paid for, in whole or in part, by the reporting organization where such dinner, reception or other similar event is primarly for the benefit or convenience of one or more Federal officers or employees and where the total cost of such event exceeds $500. In computing such expenditures, costs for food, drinks, invitations, entertainment and hall rental are to be included. However, as indicated in subsection 3(b)(4), this paragraph does not apply to those activities that are, in fact, regulated by the Federal Election Campaign Act of 1971. Where an organization invites a Federal officer or employee to a dinner, reception or other such event which is not primarily for the benefit or convenience of one or more Federal officers or employees, then this provision would not apply. In such an instance, the provisions of paragraph 6(b)(2) would apply. To the extent that the cost of inviting the Federal officer or employee exceeded $25, it would be a reportable expenditure which must be itemized.

Paragraph (4) requires the reporting organization to identify by name any person it retains who is paid more than $1,250 during a quarterly filing period to perform activities described in subsection 3(a)(1) and any individual employee who spends 20 percent or more of his time engaged in those same activities as provided in subsection 3(a)(2), and to report the expenditures it made pursuant to such retention or employment.

In reporting expenditures for the employment or retention of such persons, the organization filing the report is given a choice of reporting the total expenditures paid, or allocating, in a manner acceptable to the Comptroller General, that portion of the retained or employed person's income which is attributable to lobbying activities. It should be noted that pursuant to subsection 5(a) an independent contractor retained to engage in those activities described in subsection 3(a)(1) is required to maintain records necessary to enable the reporting organization to comply with the bill. In making an allocation as to the expenditures made to the independent contractor for such lobbying activities, the Committee intends that the reporting organization may make such allocation in good faith based upon information provided in this regard by the independent contractor. Likewise, in making an allocation of expenditures to an independent contractor, the Committee intends that only the total dollar amount paid to the contracting organization for lobbying expenses be considered. There is no intent to require the disclosure of the amounts paid to a particular member, partner, etc., of an independent contracting firm.

A reporting organization which expends less than $1,250 during a quarterly filing period to retain any person to perform activities de-

scribed in subsection 3(a), or which employs individuals who engage in such activities but spend less than 20 percent of their time so doing, must include such expenditures in the total expenditures of the organization reported under subsection 6(b)(2) where such costs with reasonable preciseness and ease may be directly allocated to those lobbying activities. However, such retained persons and employees need not be identified by name, nor do such expenditures need to be individually listed.

Paragraph (5) calls for a description of the twenty-five issues upon which the reporting organization most heavily concentrated its lobbying efforts during the quarterly filing period. When the issue involves legislation, the description shall include the applicable bill number when such number is available. In some instances proposed legislation may be so comprehensive in nature that a mere reference to the subject matter of the entire bill would not be sufficiently informative. In such instances, the lobbyist should, in addition to providing the relevant bill number, indicate the subject matter of the particular portions of the bill to which it has directed its lobbying activities. When the issue involves lobbying communications with the executive branch, the description shall include an indication of the executive branch, department, or agency with which the reporting organization communicated. In both cases, it is intended that the lobbyist provide enough information about the issue in order to clearly set forth the subject matter of the issue and the lobbyist's general position on that matter.

This paragraph also calls for a more generalized description of any other issues upon which the reporting organization lobbies. It is intended that a general categorization of issues will suffice to meet this requirement. The principal function of this provision is to inform the public and the Congress that an organization has attempted to influence the governmental decision-making process on other issues without imposing an unnecessary administrative burden on the reporting organization.

Paragraph (6) requires a description of solicitations made by a reporting organization and the subject matter of such solicitations. The intent here is to require the disclosure of only two features of the solicitation. First, the organization must disclose the form in which the solicitation was made. For example, was the solicitation made through an action letter by the organization to its members? Secondly, as previously indicated, the organization must disclose the subject matter of the solicitation.

The disclosure requirements of this paragraph do not come into play unless the solicitation exceeds the minimum thresholds set forth in the bill. Consequently, no disclosure as to solicitations is required unless the reporting organization makes one or more such solicitations on the same issue which are intended to reach, or could reasonably be expected to reach 500 or more people, 25 or more of the reporting organization's officers or directors, 100 or more of its employees, or 12 or more affiliated organizations.[11]

In determining whether a solicitation meets the minimum threshold for reporting, the organization's entire solicitation effort on a par-

[11] See definition of term "solicitation" provided in subsection 2(10) as it relates to oral or written communications by one registered organization to another registered organization.

ticular issue should be considered. For example, an organization may mail 400 letters urging the recipients to write Congress on a particular issue and then, a week later, solicit 150 additional people by telephone on the same issue. Since the total campaign reached over 500 persons, this paragraph would apply. To qualify under this subsection, the minimum number of solicitations must all refer to the same issue or issues. If 300 persons are solicited on an environmental issue and 200 persons on a tariff issue, the provision would not apply. However, if the first solicitation refers to an environmental issue and the second to the same environmental issue, plus a tariff issue, the subsection applies insofar as the organization's effort on the environmental issue alone is concerned.

Finally, this paragraph provides that in the case of a written solicitation an organization may in its discretion meet the disclosure requirements by filing a copy of such written solicitation. The Committee feels that this in no way discriminates against those organizations which more frequently make oral solicitations because the same information is, in fact, disclosed. The form and the subject matter of the written solicitation will be disclosed by the copy of the solicitation itself. Nothing more is called for or intended in the disclosure of oral solicitations.

Paragraph (7) calls for the disclosure of each known direct business contact [12] between th reporting organization and any Federal officer or employee whom such organization has lobbied during the quarterly filing period. This provision is aimed at the disclosure of potential conflict of interest situations. However, nothing in this paragraph is intended to conflict with or to negate any other conflict of interest provisions included in any other law. The Committee feels that although the primary purpose of this legislation is to inform the public and the Congress as to efforts by outside organizations to influence the Federal decision-making process, it is entirely consistent with this purpose to require the disclosure of such business relationships between lobbyists and those whom they seek to influence.

Paragraph (8) requires a reporting organization to disclose certain information relating to contributions and dues received by the organization. Specifically, this paragraph would require an organization to disclose its general dues or contribution schedule in all instances. However, before a contribution is reportable under this subsection, it must exceed what is called for in the organization's dues or contribution schedule. In those instances where a contributor, whether an individual or an organization, makes a total annual contribution in excess of such dues schedule and such contribution exceeds $2,500 and constitutes in excess of one percent of the total contributions received by the reporting organization, then the reporting organization would be required to disclose the identity of such contributor and the amount contributed in excess of such schedule. The reason for this provision is to provide an indicator to the public as to the identity of those persons who may exercise a substantial degree of control over an organization's policies. This provision should not be interpreted to require the disclosure of an organization's complete membership list. Rather it only requires disclosure of those persons whose contributions are suffi-

[12] The term "direct business contact" is defined in subsection 2(3).

ciently high in the context of the dollar amount contributed, on the one hand, and in relation to the overall contributions received by the reporting organization on the other.

However, the Committee has determined that in no case shall it be necessary for an organization classified under subsection 501(c)(3) of the Internal Revenue Code to disclose the identity of its contributors. The rationale for this determination is that the tax statutes preclude such organizations from engaging in any substantial lobbying. As indicated above, the main reason for this paragraph is to identify those persons most likely to exercise a substantial degree of control over an organization's policies. Contributors to 501(c)(3) organizations are less likely to have any significant influence over such an organization's lobbying activities because of the stringent prohibitions against significant lobbying efforts imposed on such organizations. Furthermore, contributions to such organizations frequenty are made anonymously, thereby making it almost impossible to identify their source. Also, the Committee has chosen to exempt the contribution of voluntary services from the scope of this paragraph. This exemption is consistent with the entire theme of this bill that only organizations which employ or retain others to lobby on behalf of the organization are covered.

Subsection 6(c)

If a registered organization directs a nonregistered affiliate to engage in a solicitation or if the registered organization reimburses such a nonregistered affiliate for expenses incurred in making such a solicitation, then such registered organization must report such solicitation as if it were initiated by it. The purpose of this subsection is to close the potential loophole of a registered organization using an affiliate as a front to make all, or a substantial part, of its solicitations in order to escape having to report those solicitations. It is implicit in this provision that the registered organization have that degree of control to effectively require its affiliates to make a solicitation, or that there is such a coordination of efforts that the registered organization reimburses the affiliate for making a specific solicitation.

Section 7—Powers of the Comptroller General

Section 7 grants the Comptroller General the necessary administrative and investigative powers he must have to administer the law effectively.

Subsection 7(a)

This subsection grants the Comptroller General the following powers:

(1) to informally request or to require by subpoena access to such records, reports and correspondence which he needs to meet his investigatory obligations under the bill;

(2) to administer oaths and affirmations;

(3) to require the attendance and testimony of witnesses and the production of documentary evidence;

(4) to order that depositions be taken in connection with any proceeding or investigation;

(5) to pay the usual witness and mileage fees; and

(6) to petition the appropriate U.S. district court for an order to enforce subpoenas issued pursuant to paragraphs (1), (3) and (4) of this subsection.

Subsection 7(b)

This subsection provides that no individual or organization shall be subject to civil liability in any private suit by any other person for disclosing information requested or subpoenaed by the Comptroller General under this bill.

Section 8—Duties of the Comptroller General

The Comptroller General will be the chief government official responsible for administration of this bill. Pursuant to subsection (a) of this section, he will have the following duties:

(1) to develop a filing, coding, and cross-indexing system to carry out the purposes of the bill. This paragraph anticipates, for example, that the Comptroller General will compile a cross-index of the issues before Congress and the organizations which lobbied on the issues. The Comptroller General is specifically required, as part of his duties under this provision, to develop an index of legislative agents and the lobbying organizations which reported retaining such agents so that Congress and the public may easily determine which lobbying organizations a particular agent represents. In cooperation with the Federal Election Commission, the Comptroller General is also directed to develop a cross-index of the persons identified in reports and registrations filed under this bill, and the persons identified pursuant to the laws administered by the Federal Election Commission. These indexes should be made available to the public and updated periodically in order to keep them current;

(2) to make copies of registrations and reports available for timely public inspection and copying. The reports, registrations and indexes are to be made available for public inspection and copying no later than 5 working days following the date of their reecipt. Charges for copies of the reports and registrations should be governed by the same standards applicable to requests under the Freedom of Information Act. They should be limited to reasonable standard charges for the direct cost of a document search and duplication. The Comptroller General should have the discretion to furnish documents without charge, or at a reduced charge, if he determines it would be in the public interest to do so;

(3) to preserve the originals or accurate reproductions of such reports and registrations for at least 5 years;

(4) to compile and summarize the information contained in registrations and reports in a way that is meaningful to the public and Congress. This summary shall include, to the extent that it is meaningful and practicable to do so, a summary of all the lobbying activities by different organizations pertaining to a particular issue before Congress. For example, the Comptroller General might describe and compare all the lobbying that was done by all the interests on a particular bill. This provision will make certain that the information collected by this bill is presented to the public and to the Congress in as usable a form as possible. Since it is the goal of this bill to ensure meaningful public disclosure of lobbying activities, the Comptroller General shall

make every effort to implement this provision to the fullest possible extent. On the other hand, information should not be compiled or summarized in an arbitrary fashion that fails to give an accurate or objective picture of any lobbying activity;

(5) to make the summaries required by paragraph (4) available to Congress and the public within 60 days after the close of each quarter and, subsequently, to publish that information in the Federal Register at the earliest opportunity. Since it is especially important that this information be timely, the Comptroller General should make every effort to make available as many of these summaries as possible before the 60th day.

(6) to conduct investigations with respect to filings, failures to file, and alleged violations of any other provision of the bill. Any investigation the Comptroller General conducts will be subject to the provisions of the Administrative Procedure Act applicable to investigations;

(7) to issue, in conformity with the applicable provisions of the Administrative Procedure Act, such procedural rules and regulations together with such forms as are necessary to implement effectively the provisions of this bill. It is anticipated that the Comptroller General will issue his initial set of proposed rules and regulations for public comment at the earliest practicable opportunity in order to expedite the effective implementation of this bill. However, it should be understood that the Committee only intends to confer the power to promulgate procedural rules. The Committee does not intend that the Comptroller General be empowered to require additional information or information with a greater degree of specificity than than required in the registration and reporting sections of this bill.

Subsection 8(b)

Currently, the Comptroller General is not subject to coverage under the Administrative Procedure Act. This subsection would subject those duties enumerated in paragraphs (6) and (7) of subsection 8(a) to coverage under the Administrative Procedure Act. For example, it is intended that the provisions of 5 USC 553 shall apply to all rules promulgated under this bill.

Section 9—Advisory Opinions

Subsection 9(a) provides that the Comptroller General must, upon a written request, render an advisory opinion regarding the applicability of the record-keeping, registration, or reporting requirements of the bill. Any person who requests an advisory opinion shall be deemed in compliance with the applicable provisions of this bill to which the request relates during the pendency of such request. A person may not request an opinion on matters not directly applicable to him. However, other organizations or individuals which experience sufficiently similar fact situations may rely on an advisory opinion rendered by the Comptroller General after its publication in the Federal Register. Before issuing an advisory opinion the Comptroller General should consult with the Attorney General.

Subsection 9(b) states that any person who, after requesting an advisory opinion from the Comptroller General, relies on it in good faith shall be presumed to be in compliance with the applicable provisions of this bill. Any advisory opinion may be modified or revoked, but the

person for whom the opinion was issued may continue to rely on the original opinion until notified in writing of the modification or revocation.

Any person who relies upon an advisory opinion initially rendered at the request of another person may continue to rely upon the original opinion until the modification or revocation is published in the Federal Register.

Under subsection 9(c) the Comptroller General must make the request for an advisory opinion, the opinion itself and any modification or revocation thereof public. He may include a summary of the facts and conclusions for the sake of clarity or brevity, or to protect the identity of the persons involved. If any person seeking an advisory opinion specifically requests that his identity not be made public, his identity should not be disclosed when the request or the Comptroller General's opinion is made public.

Subsection 9(d) requires that the Comptroller General provide any interested person with an opportunity to transmit written comments with respect to a request for an opinion. The length of time the public may have to comment is left to the discretion of the Comptroller General.

Subsection 9(e) allows a person who receives an advisory opinion adverse to his interests to file a declaratory judgment action in the Federal district court where the person resides or maintains his principal place of business.

Section 10—Enforcement

Under subsection 10(a) the Comptroller General has the duty to investigate violations of the bill. This section imposes an important, affirmative duty on the Comptroller General to investigate violations or potential violations on his own initiative so as to ensure compliance with the bill. Any investigation must be conducted expeditiously and in compliance with the Administrative Procedure Act. It is anticipated that the Comptroller General, in keeping with the intent of the Committee, will refrain from unnecessary publicity as to any investigation he conducts in order to prevent undue harassment of those under investigation.

If the Comptroller General determines that any person has engaged in practices that constitute a civil violation of the bill, subsection (b) requires the Comptroller General to attempt to correct the matter through informal methods of conferences and conciliation. Every effort should be made to resolve compliance problems in this way. If the effort fails, the matter must be referred to the Attorney General.

Where the Comptroller General determines, after an investigation, that there is reason to believe there has been a criminal violation of the bill, he is required by subsection (d) to refer the matter to the Attorney General.

Whenever the Comptroller General refers a civil or criminal matter to the Attorney General, the Attorney General should act upon the referral in as expeditious a manner as possible. Pursuant to subsection (e) the Attorney General must report to the Comptroller General on the status of the referral within 60 days. Similar reports must be issued at the close of every 90-day period thereafter, until there is a final disposition of the case. This will allow the GAO to monitor the progress

76-445—76——5

of cases referred by it to the Justice Department. However, the Committee does not intend that the rights and privacy of the individuals or organizations involved be prejudiced by these reports from the Attorney General.

Nothing in section 10 should be construed so as to bar independent investigations by the Attorney General. The Department of Justice does not have to await the referral of a matter from the Comptroller General before bringing a civil or criminal action. Relief in a civil action may include a permanent or temporary injunction, restraining order, or any other appropriate order. In accordance with normal practice, criminal actions must be filed in the district where the violation occurred; civil actions must be filed where the person violating the law's provisions is found, resides, or transacts business.

The inadequacies of the present lobbying law have in part been due to its failure to provide a means for effective enforcement of its provisions. Section 10 is intended to eliminate this problem. Under this section, the Comptroller General and the Department of Justice are clearly required to ensure full compliance with the new law.

Section 11—Reports by the Comptroller General

The Comptroller General must submit an annual report to the President and to each House of Congress. Each report must contain a detailed statement about the activities of the Comptroller General in carrying out his duties under this bill, together with any recommendations for such legislative or other action that the Comptroller General may consider appropriate.

Section 12—Congressional Disapproval of Regulations

This section provides that no rule or regulation promulgated by the Comptroller General shall become effective until notice thereof has been transmitted to the Congress. Either House of the Congress shall have ninety days of continuous session in which to consider such rule or regulation, and a majority vote by either House within that ninety days adopting a resolution disapproving such rule or regulation shall prevent it from becoming effective. Upon the failure of either House to act within the ninety day period, the Comptroller General may place the proposed rule or regulation into effect.

The Congressional review would occur after the completion of statutory rule making procedures, and the only action which could be taken would be for either House to disapprove the proposed rule. Thus, the administrative functions associated with rule making are separate from the limited right of review accorded Congress by this bill.

The Committee intends that, for the purposes of reviewing regulations proposed by the Comptroller General, the Congress may disapprove any provision or series of interrelated provisions which states a single separable rule of law.

The Committee maintains that this provision does not give the Congress the power to revise proposed regulations by disapproving a particular word, phrase, or sentence, but only gives each House of the Congress the power to determine which proposed regulations constitute distinct regulations which can only be disapproved in whole. This provision is intended to permit disapproval of discrete, self-contained sections or subdivisions of proposed regulations and is not intended to permit the rewriting or regulations by piecemeal changes.

Section 13—Sanctions

Subsection (a) states that any person who knowingly fails to comply with the registration, reporting, or recordkeeping requirements of the bill or the regulations pertaining thereto shall be subject to a civil penalty of not more than $5,000.

Subsection 13(b) provides for criminal penalties in instances where there is willful and knowing violation of the bill or the regulations pertaining thereto. The provision is analogous to the general Federal frauds section contained in 18 USC 1001 applicable to any submission of information to the executive branch. As set forth in subsection 13(b), criminal penalties apply to any person—

(1) who knowingly and willfully fails to file the required registration, keep the required records, file the required reports, or furnish the required information, or,

(2) who, in connection with any such registration, record, or report, or with the furnishing of any information, knowingly or willfully falsifies, conceals, or covers up a material fact or makes false statements or files false writings or documents knowing them to be false.

Such violations may subject any person to a fine of not more than $10,000, imprisonment of not more than 2 years, or both.

The word "knowingly" imposes the common *mens rea* requirement in criminal law that the person be aware of the nature of his conduct. The term "willfully" imposes an additional standard. It is intended by this that the person also knew his conduct was unlawful, or that he believed there was a likelihood that his conduct was unlawful. For example, where a person knowingly proceeds in express disregard of an advisory opinion obtained from the Comptroller General which characterizes his proposed course of conduct as illegal, the bill's criminal sanctions would be applicable. Similarly, if an individual materially alters a document in his files before providing it to the Comptroller General in response to a request for the document, the individual may be subject to criminal penalties under this provision.

Subsection (c) provides that any person who knowingly and willfully fails to provide or falsifies all or part of any records required to be furnished to an employing or retaining organization shall be subject to a fine not to exceed $10,000, imprisonment for not more than 2 years, or both.

Subsection (d) prohibits any person from using information disclosed pursuant to this bill for commercial purposes or for the purpose of soliciting contributions. Any person who violates this provision shall be subject to a civil penalty of not more than $10,000. This provision is not intended to prevent the public dissemination of information about lobbying by publications of general distribution which are directly relevant to efforts to inform the public about lobbying. Rather it prohibits any person who copies information from the files of the General Accounting Office from using it for unrelated commercial purposes such as for the development of commercial mailing lists, or for fund raising purposes.

Section 14—Repeal of Federal Regulation of Lobbying Act

This section repeals the Federal Regulation of Lobbying Act of 1946 (2 USC 261 *et seq.*) and that part of the table of contents of the Legislative Reorganization Act of 1946 which pertains to title III thereof.

Section 15—Separability

Section 15 contains the standard separability provision. If any particular provision, or its application to any person or circumstance, is held invalid, the validity of the remainder of the bill is not thereby effected.

Section 16—Authorization of Appropriations

Section 16 authorizes the appropriation of such sums as may be necessary to carry out the bill's provisions.

Section 17—Effective Date

This section provides that the bill shall go into effect on the first day of the first calendar quarter beginning after the date on which, in accordance with section 12, the first regulations prescribed take effect.

Committee Vote

(Rule XI 2(1)(2)(B) of the House Rules)

On August 25, 1976, the Full Committee on the Judiciary approved the bill H.R. 15 by a rollcall vote of 26–3.

Cost

(Rule XIII (7)(a)(1) of the House Rules)

The bill would transfer administrative responsibilities from the Clerk of the House and the Secretary of the Senate to the General Accounting Office under the direction of the Comptroller General. The bill calls for the General Accounting Office to serve as the repository for all registrations and reports filed under this bill and to conduct investigations relating to such registrations and reports. Likewise, the Comptroller General is authorized to render advisory opinions as to the applicability of the provisions of this bill to any individual or organization. The cost estimate furnished to the Committee by the Congressional Budget Office for fiscal years 1977, 1978, 1979, 1980 and 1981 are as follows:

Cost Estimate: A majority of the costs associated with this bill are for GAO personnel. The costs are summarized in the table below.

COST

[In thousands of dollars]

	Fiscal year—				
	1977	1978	1979	1980	1981
Personnel costs	832	884	930	979	1,028
Other costs	545	400	404	408	412
Total	1,377	1,284	1,334	1,387	1,440

Oversight Statement

(Rule XI 2(1)(3)(A) of the House Rules)

The Subcommittee on Administrative Law and Governmental Relations of this Committee exercises the Committee's oversight responsi-

bilities with reference to matters involving legislative modifications or amendments to Federal lobbying legislation in accordance with rules VI (b) and VII of the Rules of the Committee on the Judiciary. The favorable consideration of this bill was recommended by that subcommittee and the Committee has determined that legislation should be enacted as set forth in this bill.

Budget Statement

(Rule XI 2(1) (3) (B) of the House Rules)

As has been indicated in the Committee statement as to cost made pursuant to Rule XIII (7) (a) (1), the bill will require appropriations to meet the requisite costs of administration and investigation. The estimated costs for fiscal years 1977, 1978, 1979, 1980 and 1981 will be respectively $1.377 million, $1.284 million, $1.334 million, $1.387 million, and $1.440 million.

Estimate of Congressional Budget Office

(Rule XI 2(1) (3) (C) of the House Rules)

Congressional Budget Office

COST ESTIMATE, JULY 8, 1976

1. Bill No.: H.R. 15.
2. Bill title: Public Disclosure of Lobbying Act of 1976.
3. Purpose of bill: This proposed legislation replaces the Lobbying Act of 1946 with more comprehensive and definitive standards on the public disclosure of lobbying activities intended to influence congressional or executive decisions. The bill definies those lobbyists who must register and also specifies the contents of the reports which they must file. Supervision of all lobbying activities is designated to be under the jurisdiction of the Comptroller General.
4. Cost Estimate: A majority of the costs associated with this bill are for GAO personnel. The costs are summarized in the table below.

COST

[In thousands of dollars]

	Fiscal year—				
	1977	1978	1979	1980	1981
Personnel costs	832	884	930	979	1,028
Other costs	545	400	404	408	412
Total	1,377	1,284	1,334	1,387	1,440

5. Basis of Estimate: The costs of this bill are based on an assumption of 3,000 lobbyists filings per year, which is a substantial increase over the approximate 1,700 current filings.[13] This increase is based on

[13] Report to Committee on Government Operations, United States Senate, "The Federal Regulation of Lobbying Act—Difficulties in Enforcement and Administration," Comptroller General of the United States.

the experience of several states where they have passed similar legislation, i.e., stricter standards for lobbyists. Based on this assumption, the personnel costs were estimated for the following activities: (1) Manual screening of registration forms and reports; (2) Compliance and enforcement; (3) Automated filing of registrations and reports; (4) Analysis and report preparation; (5) Legal counseling; and (6) Public information services.

The total staff required to implement these activities was estimated at 49 professionals and clerks totalling $832,000 in salaries for fiscal year 1977. This estimate was based in part on assumed staff productivity levels. For example, the staff for manual screening activities was based on 3,000 registrations and 12,000 reports filed per year. It was assumed that it would take 15 minutes to screen each registration form and 30 minutes to screen each report. These assumptions resulted in 6,750 man-hours, or approximately 4 clerical man-years. A similar methodology was employed for staffing levels for other previously mentioned activities. The other costs were composed of miscellaneous expenses such as equipment, supplies, personnel benefits, travel and computer time.

6. Estimate comparison: GAO prepared an informal cost estimate totalling $940,000. The estimate was based on 2,000 filings and did not include costs for personnel benefits or computer time.

7. Previous CBO estimate: A cost estimate, dated May 14, 1976, was prepared for S. 2477, Lobbying Disclosure Act of 1976; there is no difference in costs.

8. Estimate prepared by: James V. Manaro.

9. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Oversight Findings and Recommendations of the Committee on Government Operations

(Rule XI 2(1)(3)(D) of the House Rules)

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1)(3) of House Rule XI.

Inflationary Impact

(Rule XI 2(1)(4) of the House Rules)

In compliance with clause 2(1)(4) of House Rule XI, it is stated that this legislation will have no significant inflationary impact on prices and costs in the operation of the national economy. The bill provides for the procedural matters referred to above. It does not provide for any new programs.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C. September 16, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your requests for the views of this Department on H.R. 15 and H.R. 1734, bills entitled, the "Public Disclosure of Lobbying Act of 1975."

The bills would repeal the Federal Regulation of Lobbying Act and replace it with provisions that would, inter alia, require lobbyists, with certain exceptions, to keep records and file various reports, including a notice of representation, with the Federal Election Commission. Section 6 of the bills would prohibit compliance with the filing requirements of the bills from being taken into consideration in determining, under the Internal Revenue Code, whether a substantial part of the activities of an organization constitutes an attempt to influence legislation. Section 7 of the bills would require all officials and employees of the executive branch in Grades GS–15 and above or in any of the executive levels who are responsible for making or recommending decisions affecting the policy making process in the executive branch to prepare a record of each oral or written communication received directly or by referral from "outside parties" expressing an opinion or containing information with respect to such process. The record would have to be in the form and contain such information as the Federal Election Commission prescribes.

The Department suggests that section 6 of H.R. 15 and H.R. 1734 be deleted. This section relates to sections 170 and 501 of the Internal Revenue Code which prohibit charitable organizations from engaging in "substantial" lobbying activities. Under current Internal Revenue Service practice, in determining whether lobbying is a substantial activity of a particular charitable organization, much weight is given to whether the organization engages a paid lobbyist. The effect of section 6 of the bills would be to unduly restrict the Service's discretion in administering these Code provisions. This Department feels that direction as to the manner in which the Internal Revenue Service should administer the tax laws is inappropriate in legislation which is only peripherally related to tax matters.

The Department believes that section 7 places an unjustified burden on the executive branch. As written the section suffers from vagueness and uncertainty. For instance, do "outside contacts" in section 7 include only lobbyists, the regulation of whom is the general concern of the bills, or does it mean the general public at large, including members of Congress, their staffs or personnel of other departments or agencies. The scope of outside contacts seems limitless, and it could be construed to include a conversation occurring at a social function. There

is no reasonable manner of estimating the costs to the Department until the scope of the reportable contacts is known.

Likewise, while the form and information contained in the reported contacts are to be left to the Federal Election Commission, such broad provisions suggest further uncertainty. What is meant by docket numbers? Are these cases lodged in courts, and administrative tribunals, or do they include proposed agency legislation, etc.? In general the recordkeeping requirements could be time consuming and cumbersome. A separate inventory of records systems would have to be established. Thus, unless clearly delineated, the bills' provisions would seem to require considerable manpower and money to establish an elaborate system of recordkeeping for material of an indefinite, indiscriminate and indefinable value. Under these circumstances, we question whether the cost to benefit ratio of the proposed legislation is justified.

In view of the foregoing, the Department's view at this time would be opposed to H.R. 15 and H.R. 1734 unless section 6 is deleted and section 7 refined and precisely limited in scope.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

RICHARD R. ALBRECHT, *General Counsel.*

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 20, 1975.

MR. MEADE WHITAKER,
Chief Counsel, Internal Revenue Service,
Internal Revenue Building, Washington, D.C.

DEAR MR. WHITAKER: The House Judiciary Subcommittee on Administrative Law and Governmental Relations, chaired by the Honorable Walter Flowers, is currently considering lobbying disclosure legislation. One of the concerns expressed by the Subcommittee is the likely effects of the proposed legislation on those tax exempt organizations provided for in 26 U.S.C. 501(C)(3).

Such organizations are not covered under the current lobbying statutes; however, under the proposed legislation now under consideration, they would be required to register and report as lobbyists.

The existing tax laws currently preclude 501(C)(3) organizations from devoting a substantial portion of their activities to attempting to influence legislation. The subcommittee does not desire to jeopardize the tax exempt status of such organizations merely by the fact that they would now have to register, where the same activity under the current law would not be grounds for the loss of their tax exempt status.

With this in mind, the Subcommittee is interested in a clarification from the Internal Revenue Service as to the specific criteria employed in determining whether a 501(C)(3) organization has engaged in "substantial" lobbying activity. If no such criteria have been established, would there be any major problems in developing a concrete set of guidelines which could be resorted to and relied upon by the aforementioned category of organizations.

If it would be possible to provide the requested information by November 3, 1975, it would be both greatly appreciated and very beneficial to Mr. Flowers' Subcommittee. Thank you for your consideration.

Sincerely,

PETER W. RODINO, Jr., *Chairman.*

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., November 5, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciray,
House of Representatives, Washington, D.C.

DEAR MR. RODINO: Reference is made to your letter of October 20, 1975, in which you indicated that the House Judiciary Subcommittee on Administrative Law and Governmental Relations is currently considering lobbying disclosure legislation and that one of the Subcommittee's concerns is the likely effect of the proposed legislation on exempt organizations described in 26 U.S.C. § 501(c)(3). A copy of your letter is attached for your ready reference.

In response to your inquiry, it might be helpful to describe the Internal Revenue's approach to the question of "substantial" lobbying activity, and to mention some of the current administrative and legislative efforts directed at providing guidelines.

As your letter indicates, existing tax law exempts under section 501(c)(3) of the Internal Revenue Code an otherwise qualified organization "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation." The regulations implementing this statutory limitation are devoted to definitions of what constitutes attempts to influence legislation, and do not address to the quesion of what is "substantial."

In general, there have been relatively few cases involving the statutory limitation on attempts by section 501(c)(3) organizations to influence legislation, and in those cases the central issue has usually been whether the questioned activities could properly be characterized as attempts of the kind contemplated by the statute. Once that question has been resolved in a given case, the answer to the question of whether the activities are substantial will frequently be self-evident.

When the question of substantiality is in issue, however, the Service has tried to give a common sense construction to the word "substantial" and has necessarily looked to relevant judicial decisions in resolving the issue. The facts and circumstances of a case are examined and evaluated in the light of existing precedents and with due regard to the legislative history surrounding the enactment of the lobbying limitation by the Congress in 1934. In this latter connection see, for example, the report of the Senate Finance Committee, S. Rep. No. 558, 73d Cong., 2d Sess. 30 (1934). The essential problem remains, however, that there is no simple rule setting forth what constitutes substantial lobbying.

The only published statements guiding Service personnel and the public in determining whether legislative activity is "substantial" are found in the Internal Revenue Manual (11)671 § 674, (copy attached) which, in pointing out this problem, mentions the case of *Seasongood* v. *Commissioner*, 227 F.2d 907 (1955). The *Seasongood*

case involved an organization devoted to the advancement of good government that also endorsed candidates and sponsored or opposed legislation. In finding for the taxpayer, the court compared the "time and effort" expended on political activities to the total time and effort expended by the organization on all its activities, found that attempts to influence legislation constituted five percent of the total activities of the organization, and held that this amount was not substantial.

The case of *Christian Echoes National Ministry, Inc.* v. *United States*, 470 F.2d 849 (10th Cir. 1972) provides a good general illustration of the foregoing observations. The central issue in the case was whether or not certain of the organization's activities constituted proscribed attempts to influence legislation. The court criticized a percentage rule in these words:

"A percentage test to determine whether the activities were substantial obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances." *Cf. Seasongood* v. *Commissioner of Internal Revenue* [56–1 USTC ¶9135], 227 F.2d 907 (6th Cir. 1955).

Notwithstanding the rarity of cases turning on the question of whether legislative activity is or is not "substantial," the Service continues its efforts to develop more concrete guidelines to aid section 501(c)(3) organizations and Service personnel in better determining their respective rights and obligations in this area. For example, an outline of factors to be employed in determining the extent to which section 501(c)(3) organizations may carry on activities of a legislative nature is being considered. These factors center on the degree of legislative activity as evidenced by expenditures of time and effort, actual dollar amounts expended on legislative activities, and whether the objectives of the organization may be accomplished only by the enactment or defeat of proposed legislation. It is probable that publication of any such outline would be in the form of proposed regulations, so that affected organizations would be afforded an opportunity to be heard on the subject prior to adoption by the Service of the guidelines.

It should also be mentioned, however, that proposed legislation has been introduced in the current session of the Congress providing specific percentage tests for determining when attempts by a section 501(c)(3) organization to influence legislation would be considered "substantial" (H.R. Rep. No. 8021), 94th Cong., 1st Sess. (1975)). Similar legislation was proposed in the 93d Congress. (H.R. Rep. No. 2037, 93d Cong., 2d Sess.), but was deleted in later drafting sessions on a proposed comprehensive tax bill because of certain problems that could not be resolved in the time available. Representatives of the Treasury Department worked on the provision at that time with the Office of the House Legislative Counsel and with staff members of the Joint Committee on Internal Revenue Taxation. It is thus not possible at present to provide definitive answers to the question you have raised regarding interpretation of the lobbying limitations on section 501(c)(3) organizations in view of the pending bill on the subject.

As a final observation, I should emphasize that, under any test, mere registration as a lobbyist as contemplated under the House Judiciary Subcommittee's proposed bill, would not result in the revoca-

tion of the tax exempt status of the registering organization. It is equally evident, however, that although as a matter of law the tax exempt status of such organizations would not be jeopardized, it is anticipated that requirements such as those in your proposed bill would provide the Service with a handy tool for identifying those section 501(c)(3) organizations which do lobby, and which consequently could be in violation of the Internal Revenue Code's limitation on such activities. It is likely that the annual information returns of organizations so identified would be subject to audit more frequently than those organizations that are not registered.

If I or my staff can be of further assistance in this matter, please let me know.

Sincerely yours,

MEADE WHITAKER, *Chief Counsel.*

Enclosures.

762 Definition of "Attempting to Influence Legislation"—Continued

* * * of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

"(b) Advocates the adoption or rejection of legislation." [234]

The regulations adopt the term "action organization" to describe both these organizations and those that intervene in political campaigns.

(2) The proscribed activity is not limited to direct appeals to members of the legislature. Also included are appeals to the electorate asking them to contact legislators. This includes all appeals to the general public, not merely those that contain a request to contact a legislator or take other specific action. Similarly, requesting executive bodies to support or oppose legislation is included. If the underlying purpose is the advocacy of particular legislation, then there has been an attempt to influence legislation within the meaning of the Code.[235]

(3) Appealing to the legislature does not include appearances before legislative committees in response to official requests for testimony. The Service has ruled that a university's exemption would not be jeopardized when, in response to an official request, it sent representatives who could advise a Congressional committee on the possible effects of specific legislation.[236]

(4) In determining substantiality, it is sometimes difficult to determine what supporting activities should be included with the proscribed attempts to influence legislation. This is often a problem where an organization has some activities that are admittedly educational. Frequently, much effort is devoted to research, discussion, and similar activities. The problem is how much of these back-up activities should be considered part of the attempts to influence legislation. In the case of the League of Women Voters, the time spent in discussing public issues, formulating and agreeing upon positions and studying them preparatory to adopting a position was all taken into account in determining the substantiality of the attempts to influence legislation

[234] Regs. 1.501(c)(3)–1(c)(3)(ii).

[235] *Roberts Dairy Company* v. *Commissioner*, 195 F. 2d 948 (1952); *American Hardware and Equipment Company* v. *Commissioner*, 202 F. 2d 126 (1953), certiorari denied, 346 U.S., 814 (1953).

[236] Rev. Rul. 70–449, C.B. 1970–2, 111.

in comparison with the other activities.[237] Attempting to influence legislation does not necessarily begin at the moment the organization first addresses itself to the public or to the legislature.

(5) Study, research, and discussion of matters pertaining to government and even to specific legislation may, under certain circumstances, be aducational activities and not fall within the proscribed attempts to influence legislation. This is so where the study, research, and discussion do not serve merely as a preparatory stage for the advocacy of legislation. A nonprofit organization was held exempt under IRC 501(c)(3) when it engaged in non-partisan study, research, and assembly of materials on prospective court reform legislation and disseminated those materials to the public.[238]

763 DEFINITION OF "LEGISLATION"

(1) The regulations define the term "legislation" to include:

"* * * action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure." [239]

(2) For purposes of IRC 501(c)(3), there is no distinction between "good" legislation and "bad" legislation. There is some authority for the contrary view, however. An old, but frequently cited case, involved the exempt status of a good government organization. One apparent ground for preserving exemption was the court's view that unselfish efforts to promote laws for better government were not a bar to exemption.[240] A more recent case held that a local bar association was a charitable organization. Again, one basis for this conclusion was the court's view that efforts to promote good government and judicial reform legislation, because they were unselfish, were not precluded to a charitable organization.[241] However, there are contrary judicial views that it is not necessary or possible to distinguish between good and bad legislation.[242] This is in accord with the traditional view dating back many years and now re-enforced by a dictum of the Supreme Court to the effect that the statutory restriction on attempts to influence legislation "made explicit" a longstanding judicial principle that "political agitation as such is outside the statute, however innocent the aim.[243] Thus, an organization was not exempt under IRC 501(c)(3) when it was substantially engaged in promoting legislation for the humane treatment of animals.[244]

764 DEFINITION OF "SUBSTANTIAL"

(1) Attempts to influence legislation that are less than a substantial part of the organization's activities will not deprive it of exemption. There is no simple rule as to what amount of activities is substantial.

---

[237] *League of Women Voters of the United States* v. *United States*, 180 F. Supp. 379 (1960); certiorari denied, 364 U.S. 822 (1960); *Alan B. Kuper* v. *Commissioner*, 332 F. 2d 562 (1964), certiorari denied, 379 U.S. 920 (1964).

[238] Rev. Rul. 64–195, C.B. 1964–2, 138.

[239] Regs. 1,501(c)(3)–1(c)(3)(ii).

[240] *Murray Seasongood* v. *Commissioner*, 227 F. 2d 907 (1955).

[241] *John F. Dulles, ext.* v. *Johnson*, 273 F. 2d 362 (195), certiorari denied 364 U.S. 834 (1960).

[242] *League of Women Voters of the United States* v. *United States*, supra; *Alan B. Kuper* v. *Commissioner*, supra.

[243] *William B. Cammarano et uz.* v. *United States*, 358 U.S. 498 (1959).

[244] Rev. Rul. 67–293, C.B. 1967–2, 185.

The one case on this subject is of very limited help. The *Seasongood* case [245] held that attempts to influence legislation that constituted five percent of total activities were not substantial. This case provides but limited guidance because the court's view as to what sort of activities were to be measured is no longer supported by the weight of precedent. (See 762.) In addition it is not clear how the five percent figure was arrived at.

(2) Most cases have tended to avoid any attempt at percentage measurements of activities. The central problem is more often one of characterizing the various activities as attempts to influence legislation. (See 762.) Once this determination is made, substantiality is frequently self-evident.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 9, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests for the views of the Department of Transportation (DOT) on H.R. 15 and H.R. 1734, identical bills "To regulate lobbying and related activities."

We will address our comments to H.R. 15 although, since the bills are identical, the comments are equally applicable to H.R. 1734.

This bill broadly defines "lobbying" as "* * * a communication or the solicitation or employment of another to make a communication with a Federal officer or employee in order to influence the policymaking process * * *."

The "policymaking process" is earlier defined as "* * * any action taken by a Federal officer or employee with respect to any bill, resolution, or other measure in Congress, or with respect to any rule, adjudication, or other policy matter in the executive branch * * *."

With respect to lobbying, this bill would (i) impose filing, record keeping, and reporting requirements on lobbyists; (ii) impose record keeping requirements on Federal officials who are the objects of lobbying; and (iii) charge the Federal Election Commission with the administration and enforcement of these requirements.

The Department is particularly interested in section 7, which would require executive branch officials and employees in grades GS–15 or above and certain other persons, to make a record of each oral or written communication that they receive directly or by referral from outside parties expressing an opinion or containing information bearing upon the policymaking process. The records would include: (1) An identification of the recipient of the communication; (2) the date of receipt; (3) an identification of the sender of the communication and of the person on whose behalf the communication was sent; (4) a summary of the communication; (5) copies of any written communication in their original form; and (6) a description of any action taken by the recipient in response to the communication.

The records would be placed in public files within two days after the receipt of the communication. Pursuant to section 10(d), any official or employee who is subject to section 7 and who knowingly and willfully

[245] *Murray Seasongood* v. *Commissioner*, supra.

falsifies, forges, or fails to file any of the required records would be subject to a fine of not more than $5,000 or imprisonment of not more than 2 years, or both.

We agree with the bill's goal of ensuring that lobbying be subject to public scrutiny, and note that in the area of rulemaking, the requirements of the bill are similar to those provided in the present Department docket system as supplemented by DOT Order 2100.2, "Policies for Public Contacts in Rule Making." That order requires reports to the rulemaking dockets of the substance of all relevant meetings with members of the public. Those reports must include at a minimum: (1) A list of the participants in the meeting; (2) a summary of the discussion held at the meeting; and (3) a specific statement of any commitments made by DOT personnel as a result of the contact.

The scope of the proposed recording requirements and attendant penalties, however, goes well beyond that of the present Department system. Records must be kept of any contacts involved in policymaking, which includes not only rulemaking, but also any bill, resolution, or other measure in Congress, and any rule, adjudication, or other policy matter in the executive branch. Such a definition of policymaking is too broad in several respects. As defined it would include making recommendations regarding internal administrative affairs. We are not convinced that the sponsors of this bill realize the reach of their proposal, and urge that "policymaking" be redefined to exclude decisions and recommendations regarding internal administrative affairs. The bill's definition of "policymaking" might also be interpreted to include communications with Department contractors and grantees as well as those applying for contracts and grants, an unreasonably broad definition which would make compliance burdensome. While the language in section 2(9)(A) might be intended and can be read to exclude such communication from the reporting requirements, an exclusion should be made explicit in the statute.

For the employees who are covered by the bill, some ambiguity may exist in the definition of the type of contacts which must be recorded. This ambiguity, together with the penalties for violating the record keeping requirements, could reduce the flow of useful information in the executive branch. It is essential to the functioning of an Executive Department with regulatory responsibilities such as DOT to be able to discuss with industry and with the public in general, not only overall policy matters involved in rulemaking or regulation, but technical details that may eventually influence the ultimate policy in such matters. Federal employees could be plagued by uncertainty whether a communiction or solicitation would be considered to have been initiated by them or by outside parties, the former being a class of communication exempted from the bill by section 2(9)(B). This would be especially likely to occur when there is continuing back-and-forth communication between particular employees and outside parties. As a result of such uncertainty, Federal employees might sharply curtail their contacts with the public for fear of subjecting themselves to the bill's penalty provisions. Some of the impact of this uncertainty can be reduced by narrowing the definition of policymaking. Complete clarification, however, requires that the bill address squarely the special case of these continuing conversations.

The overly broad definition of policymaking and the requirement in section 7(a) that a record be made of every oral or written com-

munication received directly *or by referral* combine to make the proposed bill very costly. As presently drafted, we estimate the annual cost could be as much as $2,981,146 or more for this Department alone, excluding costs for new equipment, personnel, space, procedures, training, and duplicating. Our estimate is based on the following interpretations of key sections in the proposed legislation:

a. The bill applies to "* * * all officials and employees of the executive branch in grades GS–15 or above * * * responsible for making or recommending decisions affecting the policymaking process * * *."

b. Officials and employees of the executive branch in grades GS–15 or above must "* * * prepare a record of each oral or written communication received directly or by referral from outside parties * * *" with respect to the policymaking process. (Emphasis added) It is assumed that "outside parties" means all communications received from other than another Federal Government source. The term could refer to all communications received from outside of the Department.

c. The proposed bill requires recordation of each oral or written communication within two days of receipt, with each record to include information on action taken. Since communications received by referral in the Department are included, and transmittal to another official is an action, this Department assumes that many officials would be required to make two records on each piece of communication: once when initially received and referred to another official for action, and a second time when received back from the lower official with a policy or action recommendation.

The estimate was reached by applying the following facts and assumed circumstances to our interpretations. (It should be noted that, because of the impossibility of estimating the number of oral communications received, our estimate is based only on written communications. Likewise, because of the impossibility of estimating the number of persons who would qualify under section 7(a) as "* * * designated by any person to whom this subsection otherwise applies as being responsible for making or recommending decisions affecting the policymaking process in the executive branch * * *", our estimate is based only on the number of employees in grades GS–15 or above, including the Executive Schedule.)

a. The Department of Transportation has 2,418 officials and employees in grades GS–15 or above (see Figure 1).

b. 37,133,058 pieces of mail are received in the Department annually, and of these, 3,106,562 pieces are correspondence. Excluding those which merely seek information or make a request, there are 1,097,645 pieces of mail on "action/policy matters" that would come within the broad policymaking definition (see Figure 2).

c. The example used for processing one piece of correspondence (Figure 3) shows the path of a letter through the Department's organization chart. Thus in a typical case of receipt by an Assistant Secretary (Level V), transmittal to an Office Director (GS–18), through the Deputy Director (GS–17), through the Chief of a Division (GS–16) with action assigned to the Branch Chief (GS–15) and coordination with two counterpart officials, and then rerouting back through the same channels with policy recommendations, 12 occasions are found where recording would be required by section 7 of the proposed bill. Assuming that the recording of the documents will be handled by the

officials' secretaries, average grade GS–7 at $11,573 or $5.56 an hour, using only 2 minutes for each recording, the 12 recording points or 24 minutes of time costs $2.22.

Multiplying this by the 1,097,645 pieces of mail, there will be a cost of $2,436,771 for recording purposes. While it may not be necessary to seek new appropriations in this amount, the figures given put a concrete monetary value on the costs in time and paper-filing effort which the Department will shoulder if the proposed bill is adopted unchanged. This value hopefully will illustrate the enormity of the burden this bill will impose. The costs would, of course, escalate dramatically if the officials themselves made the records, which they might do as an added precaution because of the criminal sanctions imposed in the bill.

d. At the present time, the use of central filing systems, whereby all documents received in or originated by one organization are filed at a central point, is a recommended procedure. To accommodate the provisions of paragraph (5), section 7, of the proposed bill, each official may wish to keep copies of the material for instant referral, as well as provide copies to the case file and central file and an additional cost of $544,375 will be incurred for storage (Figure 4). Not calculated, but a definite consideration, is the cost of storage and retrieval of retired records.

To recapitulate, if the required records are maintained by the secretaries of the officials affected, the costs for recording purposes would be $2,436,771; added to storage costs of $544,375, this would make a total cost, subject to the conditions and assumptions described above, of $2,981,146. Costs increase when oral communications are included or when the assumption of recording by officials themselves is made.

Because of the costly and time-consuming workload on the Department's personnel and the potentially chilling impact on communication between the public and Department officials, this Department, while it supports the goals of the bill, opposes its enactment in its present form.

In addition to the foregoing comments regarding the general desirability of this bill, we would like to offer some technical comments on particular sections.

Section 7(a).—We are uncertain which Federal officials and employees would be subject to the record keeping requirements. Along with persons in grades GS–15 or above and persons in any of the executive levels under Title 5, U.S.C., section 7(a) includes persons "* * * who are designated by any person to whom this subsection otherwise applies as being responsible for making or recommending decisions affecting the policymaking process * * *."

DOT presently has no formal designations of responsibility for making or recommending policy decisions except the delegations of authority published in the Federal Register. These delegates would almost certainly be persons "* * * to whom this subsection otherwise applies * * *" by virtue of their being in a GS–15 or higher grade or in an executive level grade.

To give content to the term "designated" it would have to be interpreted to mean "expressly designated for the purposes of this Act." To implement the concept, the bill should require that such designations be made.

Section 7(b).—The requirement that records be placed in the appropriate public file within two working days would be very cumbersome. It would require that such record keeping take priority over all other department activity. If this bill is to be enacted, we recommend that a minimum of five working days be provided.

Section 7(c).—If this bill is to be enacted, provision should be made for preserving the confidentiality of materials exempt from disclosure under the Freedom of Information Act.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of these views to the Committee.

Sincerely,

JOHN HART ELY.

Enclosures.

FIGURE 1

DOT KEY OFFICIALS, FISCAL YEAR 1976

Element	Ex-I ($60,000)	Ex-II ($42,500)	Ex-III ($40,000)	Ex-IV ($38,000)	Ex-V ($36,000)	GS-18 ($36,000)	GS-17 ($36,000)	GS-16 ($36,000)	GS-15 ($36,000)
OST	1	1		6	1	19	38	58	260
USCG							1	6	56
FAA		1		1		6	34	80	1,241
FHWA		1		1	1	5	15	33	234
NHTSA			1		1	3	9	23	131
FRA			1			1	2	7	52
UMTA			1		1		2	7	34
SLSDC				1				2	4
Total (2,418)	1	3	3	9	4	34	101	216	2,012

Note: By special law—35 at $36,000.

FIGURE 2.—*Annual incoming mail*

Total incoming	[1] 37,133,058
Correspondence	[2] 3,106,562
Action/policy matters	[2] 1,097,645

Action/policy mail internal distribution[2]

OST	127,504
USCG	394,524
FAA	165,933
FHWA	160,212
FRA	50,080
NHTSA	109,824
UMTA	35,984
SLSDC	27,924
TSC	25,660
Total	1,097,645

Source:
[1] NARS 1975 followup report on DOT paperwork management.
[2] Office of Administrative Operations, TAD-442.

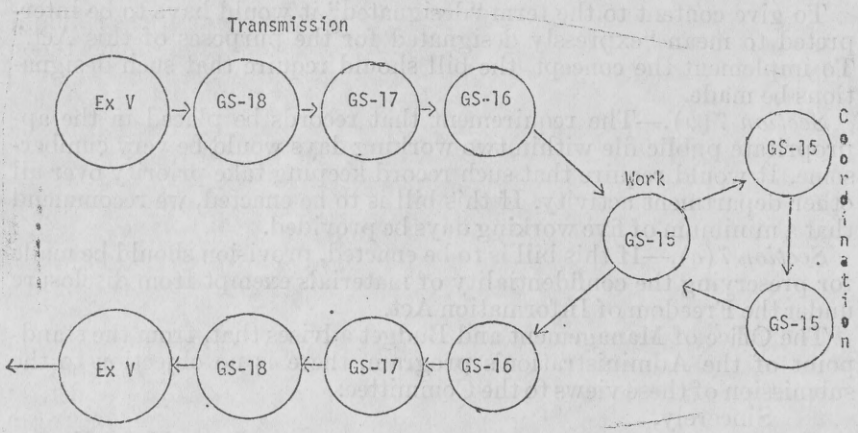

FIGURE 3.—Recording process.

12 recording points by GS–7 secretary @ 2 minutes each = 24 minutes.
24/60 = 2/5 = 2/5 of $5.56 = $2.22 (average cost of recording one document).
1,097,645 pieces of mail ×'s $2.22 = $2,436,771.90.

FIGURE 4

FILES

80 letters=1 cubic foot of file space (16 incoming letters+background filed by 5 key officials—Figure 3).
1,000,000 pieces of correspondence divided by 16 equals 62,500 cubic feet.
$8.71 cost of 1 cubic foot of storage for 1 year.
62,500 cubic feet multiplied by $8.71 equals $544,375 1-year storage cost.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C.

Re H.R. 15, 94th Congress; H.R. 1734, 94th Congress.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our views on H.R. 15 and H.R. 1734, identical bills, each entitled the "Public Disclosure of Lobbying Act of 1975."

The bills define lobbying as the communication or the solicitation or employment of another to make a communication with a federal officer or employee in order to influence the policy-making process.[1] They would generally require the public and timely disclosure of the identity of persons engaged in lobbying and the nature of their activities.

The question whether public disclosure of the activities of persons seeking to influence significant legislative or executive policy-making decisions would serve the public interest is a policy judgment best resolved by Congress. The Commission is concerned, however, about the bill's potential effect on the work of the agency and is opposed to enactment of the bills in their present form.

[1] Each bill defines "the policy-making process" as that occurring within the legislative or executive branch. Therefore, it is not clear whether the provisions of the bills are intended to apply to independent regulatory agencies, such as this Commission. For purposes of these comments, however, we have assumed that they are intended to so apply.

Each bill would require that officials and employees of the Commission in Grades GS–15 and above, as well as all persons to whom responsibility is delegated "for making or recommending decisions affecting the policy-making process," prepare a report of each communication from outside parties "expressing an opinion or containing information" regarding such activities. The definition of the "policy making process" in Section 2(2) includes any action taken with respect to a policy matter. In the absence of any precise definition of "policy matter," the bills could be interpreted to require reporting of almost every oral or written communication to the Commission that expresses an opinion or contains information with respect to the policy making process.

These bills would impose substantial burdens of compliance on Commission members and staff in order to achieve protections that are largely duplicative of those provided by existing legislation and regulations. Additionally, the requirements of these bills threaten to impede legitimate channels of communication that we consider essential to the proper administration of the securities laws.

Since the Commission's position on these bills depends in large part on their relation to existing safeguards, we believe it would be helpful to outline the nature of the communications presently received by the Commission and the restrictions governing such communications. The Commission, through its members and staff, is in almost constant contact with the public. For example, the Commission last year processed 800 securities registration statements and 1500 proxy statements under the Securities Act of 1933 and the Securities Exchange Act of 1934, respectively, as well as many more applications and registrations provided for by statute. As a part of that process, the staff often must communicate extensively with registrants and applicants to assure their fullest possible compliance with the securities laws. Likewise, the Commisson's exercise of its responsibility to oversee the self-regulatory scheme created by the Securities Exchange Act of 1934, under which he national stock exchanges, the National Association of Securities Dealers and the Municipal Securities Rulemaking Board regulate the conduct of their members, requires that our staff constantly be in communication with these organizations.

In these and many other ways, the Commission must maintain regular daily contacts with outside parties that commonly would not be considered lobbying. The bulk of these communications are an essential aspect of our regulatory function.

In order to protect the administrative process from improper influence, the Commission in 1963 adopted a Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees, 17 C.F.R. 200.110–114.[2] This Code of Behavior governs ex parte communications relating to "proceedings where an evidentiary hearing has been ordered pursuant to a statutory provision or rule of the Commission and where the action of the Commission must be taken on the basis of an evidentiary record," thus applying to most Commission adjudicatory proceedings, including all licensing functions within the meaning of 5 U.S.C. 551(8) and (9).

[2] The Canons of Ethics for Commission members, 17 C.F.R. 200.62, specifically provide that a member shall at all times comply with this Code of Behavior. Copies of all Commission regulations referred to in this letter are attached.

These regulations require that any Commission member or decisional employee receiving an ex parte oral communication in such a proceeding that he knows to be "unauthorized" [3] prepare a memorandum reflecting the content of the communication and the circumstances under which it was made. This memorandum must be sent to the Commission's Secretary, who will place it in the public file, send copies to all participants in the proceeding, and inform the communicator of the Commission's rules prohibiting unauthorized ex parte communications.[4] All participants in the proceeding may then request an opportunity to answer any contentions or allegations contained in an unauthorized ex parte communication, and the Commission will grant such requests whenever it determines that the dictates of fairness require.[5] Finally, the Commission has also promulgated rules of general applicability forbidding actual or apparent improprieties on the part of its members and staff. See, for example, 17 C.F.R. 200.61 and 200.735–3(b)(2).

The protections afforded by Commission regulations are supplemented by certain provisions of existing law. Section 23(a)(3) of the Securities Exchange Act of 1934 requires the Commission to make available for public inspection all written statements filed with it, and all other written communications relating to any rulemaking proceeding under that Act, to application for registration or to a proposed rule change by a self-regulatory organization. To a large extent the requirements of the Freedom of Information Act, 5 U.S.C. 552, also provide general public access to written communications received by the Commission members and staff.

In summary, although the Commission and its staff have substantial contacts with the public, we believe that they primarily involve communications that are essential to the responsible execution of our duties rather than those that would be regulated as "lobbying." We also believe that existing statutory safeguards and Commission regulations have generally been effective to prevent undue influence of the decisionmaking process, and will remain so in the future.

Examining the provisions of H.R. 15 and H.R. 1734 in the context of existing safeguards, the Commission feels that the requirements of each bill would necessitate a substantial and undesirable diversion of staff effort from important law enforcement and regulatory activities. The reporting requirements would have pervasive application to our staff, most of whom could be said regularly to be involved in preparing recommendations to the Commission concerning decisions affecting the policymaking process. The burden of compliance in writing the proposed memoranda regarding outside contacts would be substantial.

Although it is not possible at this time accurately to estimate the probable costs of compliance to this agency, we have attempted a rough

---

[3] The procedures relating to unauthorized written ex parte communications, which are substantially the same as those applicable to oral communications, are set forth in paragraph (a) of Section 200.112 of the Code.

[4] If the individual receiving the communication determine that it would be too burdensome to send written copies to the participants in the proceeding, however, the Secretary will notify the participants that the communication has been made and that a memorandum setting forth its substance has been placed in the Commission's public files and is available for inspection.

[5] Pursuant to 17 C.F.R. 200.114, the Commission may, to the extent not prohibited by law, censure, suspend or revoke the privilege to practice before it of any person who makes, or solicits the making of, an unauthorized ex parte communication. Similarly, the Commission may censure, suspend or dismiss any Commission employee who violates the prohibitions or requirements of the Code.

projection. We estimate that the reporting provisions of these bills, which would apply to a broad range of communications involving nearly all of our professional staff of attorneys, accountants, financial analysts and investigators, would impose an annual cost of $620,000.[6] Moreover, this estimate may be conservative in that it does not reflect additional costs that might result from the use of overtime or the employment of new personnel to handle the increased work-load. In view of the substantial duplication involved between the requirements of these bills and the safeguards already afforded by existing regulations and legislation, the Commission questions whether these substantial expenses can be justified.

Assuming Congress determines that enactment of one of these bills is appropriate, however, the Commission offers the following suggested revisions. We suggest that the "outside contacts" provisions of these bills could be amended to decrease their impact on staff operations without compromising their apparent purpose of regulations the activities of "professional lobbyists" who attempt to influence significant governmental policy determinations. For example, the employees to be covered by the bills could be limited to high-level officials most directly involved in significant policy-making decisions. Similarly, contacts required to be reported could be limited to those relating to significant policy questions. Such limitations would reduce the anticipated costs of compliance with the law, and, in view of the overlap between the provisions of these bills and existing safeguards, would seem appropriate.[7]

The Commission additionally is concerned that the requirements of these bills might disrupt communication channels that we consider important to the proper administration of the securities laws. For example, our staff regularly discusses informal interpretive views with potential registrants or their counsel. This procedure provides the Commission a useful input regarding the application of securities laws in specific situations. At the same time, it promotes lawful conduct by providing guidance respecting the complex provisions of the acts we administer. The reporting requirements of these bills may deter such inquiries, however, since attorneys' and accountants' rough work product would be made the subject of a public report by the staff. Moreover, the bills' broad definition of lobbying to include any communication to "influence the policy-making process" might be considered to apply to communications from personnel of self-regulatory organizations and the stock exchanges. Such organizations would be subjected to burdensome reporting requirements because of the frequency of their communications with our agency.

We would generally urge, therefore, that Congress formulate specific exclusions from the bills' requirements to exclude the normal conduct of the agency's day-to-day administrative, investigative and regulatory functions. Such exclusions would prevent interference with the efficient operations of the Commission while not significantly affecting

[6] This figure is based on our projection that 800 of our 1015 professional employees would be required to spend an average of five hours a month to comply and would be compensated at an average rate of $10 an hour, a total cost of $480,000. The costs of secretarial help and supplies would add an additional $140,000.

[7] For example, restricting the applicability of the reporting provisions to employees compensated at Grade GS–15 or above would reduce the number of our employees to be affected from approximately 800 to no more than 134. We estimate the total annual professional man-hour cost to this agency of complying with this more limited requirement to be approximately one-half that anticipated under the present proposals.

the apparent purpose of the bills. Moreover, in order to prevent the subjects of Commission enforcement proceedings from challenging their validity or the validity of the Commission rules on which they are based, we suggest that Congress clearly indicate that the bills' proposed sanctions are exclusive and that the validity of Commission rules or proceedings is not to be affected by non-compliance with these reporting requirements.

Finally, requiring public access to reports of all communications containing information with respect to any adjudication might be construed to expand the existing requirements of the Freedom of Information Act, 5 U.S.C. 552, regarding disclosure of investigatory records and communications from other law enforcement authorities. In many instances, such disclosure would compromise Commission investigations and might inhibit discussions initiated by persons or entities subject to potential or impending enforcement proceedings. Both results would impair this agency's law enforcement operations. We therefore suggest that Congress specifically indicate that disclosure of contacts with the agency would not be required if a record is exempt under the Freedom of Information Act.

The opinions here expressed are those of the Commission, and do not necessarily reflect the view of the President. Our comments are being submitted simultaneously to the Office of Management and Budget, and we will inform you of any advice received from OMB concerning the relationship of our views to the program of the Administration.

Sincerely,

RODERICK M. HILLS, *Chairman.*

Attachments.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
December 2, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests of March 7 and 25, 1975 for reports on H.R. 15 and H.R. 1734, which are identical bills "to regulate lobbying and related activities."

The bills would provide for public disclosure of the identities of, and certain information about, individuals and organizations engaging in lobbying activities. The public would be permitted to know, for example, the name of a person or group for whom a lobbyist works, the financial arrangements involved, and each aspect of the policy-making process which the lobbyist seeks to influence. The bills would also require certain Government officials to keep records of outside contacts with persons who seek to influence the policymaking process. Government agencies would be required to publish the records of outside contacts.

On April 14, 1975 the Commissioner of this Department's Food and Drug Administration testified before the Senate Subcommittee on Administrative Practice and Procedure, of the Committee on the Judiciary, in favor of a related bill, S. 1289—the "Open Communications Act of 1975" which applies solely to executive agencies and their

employees. Like H.R. 15 and H.R. 1734, the Open Communications Act of 1975 would require that certain Federal agency officials prepare records of oral and written communications initiated by persons outside the agency, pertaining to policy matters before the agency.

The Department as a whole, like the Food and Drug Administration, supports the basic objectives of S. 1289—objectives which are also articulated in H.R. 15 and H.R. 1734; the fostering of public confidence in Government by opening the processes by which policy decisions are influenced by representatives of particular interests.

As noted above, S. 1289 applies solely to executive branch agencies and employees. Many of the provisions of H.R. 15 and H.R. 1734, however, concern the activities of lobbyists and organizations other than executive agencies. We would like to make suggestions only with regard to H.R. 15 and H.R. 1734 provisions that would apply directly to the Department of Health, Education, and Welfare. These provisions relate to the requirement that certain executive agency officials keep records of contacts with persons outside the agency who seek to influence policy.

A fundamental question is raised by Section 2(2) which defines "the policymaking process" in broad terms as "any action taken by a Federal officer or employee with respect to any bill, resolution, or other measure in Congress, or with respect to any rule, adjudication, or other policy matter in the executive branch." This definition would seem to conflict with other laws that prohibit disclosure of information about adjudicative matters within Federal agencies.

In addition, H.R. 15 and H.R. 1734 would be especially difficult to administer in nonregulatory settings without more specific guidelines concerning areas of general management where the "policymaking process" may involve many discussions and evolve over a period of time with no particular agency proceeding taking place as a final or conclusive action. Accumulated records of outside contacts in such instances would be of little value. A more precise definition of "the policymaking process" would assure that the intent of Congress is understood clearly and that unnecessary, expensive and burdensome paperwork does not result.

We strongly recommend that the meaning of "the policymaking process" be clarified for yet another reason. To require all employees of GS–15 and above to keep records of outside contacts might prove neither necessary nor pertinent. According to the proposed definition of "the policymaking process," it may be established that many GS–15 employees are not actually engaged in this process. If the Department were able to determine which of its senior employees are involved in developing policy within the meaning of the bills and which are not, it might prove easier for us to ensure that the purposes of the bills were being carried out. In addition, we might be able to save a great deal of irrelevant paperwork. It occurs to us that with a more precise definition of "the policymaking process" we might be able to formulate a special list of those employees involved in policy, much like the listings we have available under conflict of interest regulations.

We would, however, suggest some changes in the following specific provisions of the bills: it is not clear whether the term "outside contacts," as used in these bills, includes persons within the several agen-

cies of, or is limited to persons outside, a Federal department. If "outside contacts" were interpreted to mean contacts between agencies of the same department, this would impose a heavy administrative burden, especially in departments like Health, Education, and Welfare in which extensive coordination across agency lines is required, and in which ultimate authority and responsibility is vested in the Secretary. We would strongly recommend that "outside contacts" be explicitly defined for the purposes of these bills to exclude intra-departmental, if not interdepartmental, contacts. We also believe the requirement that records of outside contacts be published within two working days is unnecessarily restrictive. If this time limit were extended to a minimum of ten working days, the reporting requirements of the bill could be more easily met without interfering with ongoing program activity.

Lastly, we believe that the question of administrative costs that enactment of the bills may make necessary is a pertinent matter to raise. While clear definition of some of the terms in the bills may serve to focus the bills' coverage and perhaps reduce costs, it seems nevertheless that making notes of meetings, transcribing notes, keeping notes on file and distributing copies to members of the public and others who request them cannot help but entail considerable staff and expense. There are too many variables and undefined terms in the bill at this time for me to offer any informed, reliable breakdown of costs which might be involved in our carrying out of the provisions of the bill, as they now read. Rough estimates made by my staff indicate that annual expenditures of as much as $1,850,000 might be necessary for formalized recording, typing, filing, indexing, reproducing, transmitting and providing access to reports on outside contacts covered by H.R. 15. We feel that once the terms in the bills are more clearly defined, some effort should be made to determine whether overall costs involved in compliance can be minimized and held to reasonable level.

Aside from the above considerations, the Department supports those provisions of H.R. 15 and H.R. 1734 which relate to executive branch agencies and their employees. However, although the Department supports the general objective of "open government," we feel that it is inappropriate for the Department to comment on the specifics of provisions that relate solely to the activities of outside individuals and organizations.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of Administration's program.

Sincerely,

DAVID MATHEWS, *Secretary.*

U.S. DEPARTMENT LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 6, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our views on H.R. 15, cited as the Public Disclosure of Lobbying Act of 1975.

This bill would require all lobbyists, as defined therein, to register with the Federal Elections Commission (FEC). Registration would include identification of the lobbyists, identification of the person that lobbyist represents as well as financial arrangements between them, and the aspects of the policymaking process that the lobbyist will attempt to influence.

Lobbyists would be required to maintain records available for inspection by the Commission, detailing the total income of the lobbyist and income attributable to lobbying activities, identification of persons from whom income is received, and the total expenditures of the lobbyist for lobbying.

Lobbyists would be required to file quarterly reports with the FEC containing information on persons for whom lobbying activity was engaged in, decisions of the policymaking process that the lobbyist tried to influence, identification of Federal officers or employees with whom the lobbyists communicated and, copies of the records described above.

The FEC would be granted authority by this bill to make investigations, to subpoena witnesses and documents, initiate, prosecute, defend or appeal civil or criminal actions for the purpose of enforcing the provisions of this bill. The Commission would develop forms and procedures for filing the records and reports required by the Act. It would also be charged with summarizing and compiling the information it collected and having it published in the Federal Register. It would also prepare reports for Members of Congress or as otherwise deemed appropriate.

The bill contains criminal sanctions for knowingly and willfully violating certain provisions including penalties for Federal employees who violate section 7.

The Department of Labor has no objections to the concept of accountability embodied in H.R. 15. We think that greater scrutiny and public disclosure of the activities of lobbyists and those they represent might serve the interests of good government. Specifically, the Department has no objection to those provisions of H.R. 15 requiring registration of lobbyists, and the maintenance and submission of records and reports. However, because of section 7 the Department of Labor recommends that H.R. 15 not be enacted.

Section 7 of the bill would require officials and employees of the Executive Branch in grades GS–15 or above, or in the executive pay schedule, or any other employees designated by such officers and employees "as being responsible for making or recommending decisions affecting the policymaking process", to prepare a record of all written or oral communications received from outside parties concerning policy decisions. The FEC would prescribe the contents of the report, but the bill requires the inclusion of the names of those who communicated with the Federal employee, the date of contact, a summary of the subject matter of the communication, copies of written material and a brief description of any response to the communication that the Federal employee may have given. Executive Branch agencies would be required to assure that such records are prepared within 2 days of receipt of the communication. The agencies would also have to assure that the records would be available for public inspection and that a comprehensive index by subject matter be maintained.

Section 7 of this bill would cause a tremendous and, we feel, unnecessary burden on this Department and on other Federal agencies. This provision could result in a significant percentage of the Federal workforce being required to record many of the communications with persons outside the government. The recording requirement would apply to those Federal employees who are designated as affecting the policymaking process in the Executive Branch, as well as the policy makers themselves. The number of people who affect the policymaking process is difficult to estimate, but a liberal interpretation of this provision would result in large numbers of Federal employees being included in that category. Every employee who gives advice on any program or proposed action of the Department "affects" policy and the policymaking process. We believe that the number of employees, not on the executive pay scale or below GS–15, who have some input to and thereby "affect the policymaking process", is substantial. The scope of section 7's recording requirement would thus extend to thousands of contacts by hundreds of our employees.

In addition to the number of people covered by section 7, the types of contacts with outside parties subject to recording could also impose a staggering burden on executive agencies. Employees covered by section 7 would be required to record contacts not just with those lobbyists who must register with the FEC, but with all "outside parties." Even though the 'policymaking process" is defined in section 2 of the bill, its use in section 7 could be interpreted to require records of virtually all communications of covered employees with outside parties.

It is rare that an outside contact does not contain information with respect to or express an opinion regarding the "policymaking process", i.e., any eventual, anticipated agency action. Thus, these many routine contacts would be required to be recorded under section 7.

The potential for burdensome, extensive recording can be illustrated by the case of one office within this Department. That office deals with only one statute and yet the many persons in that office, who, because they recommended policy action, would have to be designated as "affecting the policymaking process", received dozens of calls every day from outside parties raising questions with respect to that statute. These parties naturally express opinions or give information in response to the answers given them. Recording the information required by H.R. 15 with respect to these routine calls alone would take several man-hours a day in this office alone. It cannot be said that these contacts necessarily have an effect on policy; nevertheless, under this bill, they would require recording.

Regardless of the interpretations given to the various provisions, a great deal of the time of both professional and clerical employees of the Department would be consumed by writing, typing, indexing and maintaining for public inspection the required reports. The efficiency and productivity of the Department would be reduced.

The Department can make no certain cost estimates, but we do believe this bill would create an extraordinary burden by diminishing our effectiveness and increasing our budgetary needs. Any possible benefits of section 7, H.R. 15 would be greatly outweighed by the burden it would create.

We must note that this bill would not only affect general productivity, it would also affect entire programs of this Department. For

example, section 7 would likely require officials of our Bureau of Labor Statistics to record and later disclose contacts with companies included in BLS surveys. The Bureau relies on voluntary submission of data from its sources. The possibility of public disclosure of contacts made in connection with these submissions could jeopardize the entire statistical gathering operations of this vital bureau of the Department of Labor.

We also believe that as a result of this bill the Department of Labor would probably become less rather than more sensitive to and knowledgeable of the problems of the groups that it deals with and regulates. Many of the views expressed to this Department might be discouraged. Meetings and discussions of Federal employees with outside parties might never occur. The severe criminal penalties (maximum $5000 fine and two years imprisonment) for failure to keep the required records coupled with the uncertainty as to exactly who is subject to section 7 could serve to inhibit all but the most basic communication with individuals outside the government.

While we understand and commend the desire to disclose and thereby discourage attempts to by-pass the formal policymaking process of the Executive agencies and departments, we believe that requiring covered Federal employees to record all contacts relating to the policymaking process would be counterproductive. We therefore oppose passage of this bill.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN T. DUNLOP,
Secretary of Labor.

DEPARTMENT OF STATE,
Washington, D.C., September 10, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: Your letters of February 27 and March 25 requested the views of the Department of State on H.R. 15 and H.R. 1734, bills "To regulate lobbying and related activities".

The Department would oppose enactment of either of these bills on the ground that the system of registration, record-keeping and reporting which would be required is so complex and difficult as to discourage representatives of small or poor interest groups from making their views known. In view of the wide scope of Executive policy-making which would be subject to these bills, Government employees would be encouraged to avoid discussion of a broad spectrum of their work with the interested public because of the burden of recording contacts which might be covered by the bills.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, D.C., October 7, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your invitation to me to appear and testify or to designate a representative to appear and testify on H.R. 778, 1734 and 6864, bills "To regulate lobbying and related activities."

I appreciate the opportunity to express my views on this important subject, and regret that I was unable to appear on September 11, 1975, to testify on the proposed measures because of scheduling conflicts. The Commission is pleased, however, to furnish the Committee its views on these proposals.

H.R. 778, 1734 and 6864 would repeal the Federal Regulation of Lobbying Act of 1946 and would establish broad statutory provisions requiring public disclosure of virtually every aspect of lobbying efforts before Congress and executive agencies. H.R. 778 would create a Federal Lobbying Disclosure Commission and H.R. 1734 and 6864 would provide that the proposed act would be administered and enforced by the Federal Election Commission.

In view of the Commission's present "openness" policy with respect to meetings with outside parties and information, the Commission does not believe that enactment of H.R. 778, 1734 and 6864 would significantly affect the extent of public disclosure of lobbying activities before it.

While the Commission concurs with the intent of these legislative efforts to open government decision-making to public scrutiny, it has reservations with respect to the approach proposed in the bills.

The Commission believes that the scope and specificity of the record-keeping and report requirements of the bills applicable to persons within the broad definition of "lobbyist" may discourage active participation by interested persons in the development and implementation of federal policies or rules potentially affecting them. Further, with regard to H.R. 1734, there would be a duplication of effort involved in reporting requirements for lobbyists (under section 3 and 5) and federal employees (under section 7 of the bill).

While disclosure of certain information such as financial data may be in the public interest, the Commission believes that adoption of an "openness" policy by all regulatory agencies would accomplish the bills' intent. Accordingly, the Commission would prefer statutory provisions providing for government-wide implementation of "openness" policies with regard to meetings with outside parties and information disclosure.

The Commission's proposed and interim meetings policy (39 FR 37780) reflects the Commission's goal of increasing public confidence in the integrity of its decision-making by conducting business, to the fullest extent possible, in an open manner which is free from any actual or apparent impropriety. That policy requires that virtually all meetings between Commission personnel, regardless of grade level, and outside parties be open to the public, with the exception of those involving trade secrets or proprietary information. Meetings involving matters of substantial interest before the Commission, i.e., those per-

taining in whole or in part to any issue that at a minimum is likely to be the subject of a regulatory or policy decision by the Commission, must be publicized in the Commission's "Public Calendar" in advance of the scheduled meeting date. Preparation of detailed summaries of such meetings, including summaries of telephone conversations involving matters of substantial interest, is required by the policy and all such summaries are available for copying or inspection by the public. Further, under the Commission's proposed and interim procedures for disclosure or production of information under the Freedom of Information Act (39 FR 30298), all incoming as well as outgoing correspondence is on file and available for copying or inspection. The Commission's stated policy with respect to information requests under that act is that disclosure is the rule and that withholding is the exception.

Although government-wide implementation of an "openness" policy as described above (in effect an expansion of section 7 of H.R. 1734) may entail some difficulties, the Commission believes that such burden becomes trivial when compared to the benefits of increased public confidence. The Commission would further recommend that administration and enforcement of any such provisions may more appropriately be vested with the General Accounting Office (which is presently familiar with the operations of federal agencies) rather than with the Federal Election Commission or the proposed Federal Lobbying Disclosure Commission.

Sincerely,

RICHARD O. SIMPSON, *Chairman.*

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D.C., September 9, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the Commission's views on H.R. 15, a bill "To regulate lobbying and related activities."

The Commission is limiting its comments on this bill to section 7 which requires the recording of outside contacts. We feel that this section is too broad in its coverage since it is not limited to ex parte communications and would extend to all communications whether or not they involve rulemaking or adjudication.

The records would have to be maintained by all employees in grades GS–15 and above. There are approximately 29,000 Federal employees in such grades, most of whom are not engaged in rulemaking or adjudication. To require them to log in and write up calls and visits, most of which represent legitimate inquiries and expressions of opinion from employees, agencies, the Congress, unions and the general public would cause a substantial expenditure of time, much of which would be unnecessary. The legislation should be limited to rulemaking and adjudication—a proposal which is supported by the American Bar Association.

The Commissioners can appreciate the value of the maintenance of records of meetings with and telephone calls and written communications from members of the public by the regulatory agencies which are considering matters of licensing and regulation substantially af-

fecting the rights of the public. It becomes burdensome, however, when it includes other activities of the Government. In the case of the Commission, this section could be interpreted to require Commission officials to keep extensive records on the numerous letters, telephone calls and visits they receive daily from former employees and retirees, Congressional staff members and union representatives inquiring about employee benefits such as annuities, life insurance, and health benefits. In any of these cases the person might express an opinion as to what the Commission's policy should be toward pending legislation or interpretation of statutory or regulatory provisions. This legislation would appear to require that records be kept of all of these contacts with the public.

Also, the provisions of this bill could be interpreted to apply to communications between agency attorneys and private attorneys relating to claims against an agency, since there is no exception for such situations. Requiring that communications relating to negotiation or settlements of claims be made public would seriously impede agency efforts to compromise such claims without resort to litigation, to the detriment of the claimant, the agency, and the public interest. We believe that a statutory provision requiring claim negotiating communications to be made public would not be in the public interest and object to the bill on these grounds as well as on those earlier stated.

Additionally, the penalty for willful failure of Federal officials to report outside contacts is much too drastic. An official could be held criminally liable, theoretically, for having failed to keep his appointment calendar up-to-date, despite his receiving scores of calls and visits in the course of a week, some quite trivial in nature but which may fall within the requirements of section 7 of H.R. 15.

Most importantly, the type of matters to be recorded is not clear. The section states that each official "shall prepare a record of each oral or written communication received directly or by referral from outside parties expressing an opinion or containing information with respect to such process." What process? The term is not defined. Does it cover officials other than those "responsible for making or recommending decisions affecting the policymaking process in the executive branch"? All these phrases are used in section 7 without definition or restriction. The criminal provision is too vague and as such it is constitutionally suspect. *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939); *Evans* v. *United States*, 333 U.S. 483 (1948); *Parker* v. *City of Euclid*, 402 U.S. 544 (1971).

Courts have consistently held Government officials immune from civil liability on the grounds that to do otherwise "would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties". As Judge Learned Hand said in *Gregoire* v. *Biddle*, 177 F.2d., 579, 581:

"It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its

outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. Judged as res nova, we should not hesitate to follow the path laid down in the books."

This reasoning is even more applicable when criminal charges are involved. In addition, we would note that such a provision might well lead the best qualified persons to refuse to accept GS–15 and above positions because of fears of criminal liability.

Also, we believe that the appropriate way to insure that Federal officials comply with applicable statutes in the performance of their duties is through discipline by their superiors rather than by being subject to criminal penalties. The responsibilities of Federal officials to carry out the laws was discussed in *Newman* v. *United States*, 382 F.2d. 479. Referring to the dual role of the attorney for the United States as an officer of the court and agent for the executive branch, the court stated:

"* * * as agent and attorney for the Executive, he is responsible to his principal and the courts have no power over the exercise of his discretion or his motives as they relate to the execution of his duty within the framework of his professional employment. . . ."

Since we believe that it would be impossible to determine what oral and written communications received by the Commission would fall under the record-keeping requirements of section 7 of the bill, due to the section's vagueness, we cannot estimate the cost of keeping these records, other than to assume that it would be a substantial expenditure.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON, *Chairman.*

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 3, 1975.

Hon. PETER W. RODINO, JR.
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on H.R. 15 and H.R. 1734, identical bills "To regulate lobbying and related activities."

We recommend that neither bill be enacted in its present form.

Both bills, cited as the "Public Disclosure of Lobbying Act of 1975", require that each lobbyist shall file a notice of representation with the

Federal Election Commission not later than 15 days after first becoming a lobbyist, that each lobbyist shall maintain records which shall be available to the Commission for not less than 2 years after the date of recording, and that each lobbyist must file a quarterly report with the Commission. Section 7 of the bills require that all officials and employees of the executive in grades GS–15 or above who are involved in the policymaking process shall prepare a record of each oral or written communication received directly or by referral from outside parties expressing an opinion or containing information with respect to such process within two working days of the date when such communication was received. The bills further provide for fines of not more than $5,000 or imprisonment for not more than 2 years for lobbyists who knowingly and willfully violate provisions of the Act and Federal officers who knowingly and willfully falsify or fail to file records as required by section 7 of the Act.

From our reading of the bills, we presume that they are not intended to be applicable to lobbying activities undertaken by Federal officers or employees. This interpretation is consistent with the Anti-Lobbying Act, 18 U.S.C. § 1913 (1970), which prohibits the use of appropriated funds to pay for printed materials intended to influence the voting of a member of Congress on legislation. The Anti-Lobbying Act does not, however, apply to congressional lobbying by other means of communication or to lobbying relating to rulemaking, adjudication, or policy matters before other departments and independent agencies. If this legislation is not intended to cover such lobbying by Federal officials, it should so state in explicit terms.

We also question the applicability of portions of the bills to this Department. Lobbying is defined to mean a communication with a Federal officer or employee in order to influence the policymaking process, which is in turn defined to mean any action taken by a Federal officer or employee with respect to any rule, inter alia. "Rule" and "rulemaking" are not defined in the bills, and there is no reference to the Administrative Procedure Act, wherein these terms are used. Our question arises because, although we have as a matter of policy decided to follow the rulemaking provisions of the APA to the extent practicable, the Department has taken the position that as a matter of law the rulemaking provisions of the APA are inapplicable to it with respect to matters concerned with public property. With this background, we simply wonder whether those portions of the bills concerning communications dealing with rulemaking should be considered applicable to departmental rulemaking. Obviously, this area needs clarification.

Section 7 of the bills is particularly troublesome. It would place the affected employees and officials in constant jeopardy, since they would be threatened with criminal prosecution for failure to comply with the requirements of the section. The language of the section is so general and sweeping in scope that almost every telephone call, letter, magazine, newspaper, or conversation could fall within its purview. The term "outside party" is not defined; it could therefore be construed to refer to any person not working in the immediate office of the employee receiving the communication. It could thus refer to communications from other Federal employees. Likewise, the term "oral or written communication" is undefined and is so broad as to include newspapers and magazines.

With such broad language, it is predictable that alleged violations would occur on innumerable occasions; that the courts could be flooded with civil lawsuits; and that criminal prosecutions would increase. Whether or not these prosecutions would result in convictions is speculative, because of the vagueness of the section.

Even were section 7 to be more narrowly construed, its effects would be undesirable. Many Federal employees might refuse to have any contacts with "outside parties." Agencies might by regulation require such contacts to be limited to written materials, etc. Such reactions would have a negative effect on the governmental system. The legislation could lead to decisions made without necessary information. Secretiveness, rather than open government, would result.

Scrupulous observance of the statute would lead to a substantial increase in the employees workload—at the expense of their proper work.

Further, we would like to point out that the Bureau of Indian Affairs of this Department, as the principal agency discharging the Federal trust responsibility to Indians stands in a fiduciary relationship to its trust beneficiaries. The disclosure provisions of the bills would work a particular hardship on that relationship and, as a matter of policy, we believe that the disclosure requirements should not pertain to contacts between BIA officials and beneficiaries of that trust.

Finally, as to section 8(a)(1), we suggest that the Commission's questions should be limited to reasonable and relevant ones.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN W. KYL,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., September 10, 1975.

Hon. PETER N. RODINO, Jr.,
House of Representatives,
Washington, D.C.

DEAR MR. RODINO: This refers to your letter of March 25, 1975, requesting the views of this Department of H.R. 1734, a bill "To regulate lobbying and related activities."

With the exception of Section 7 of the bill, this Department defers to the position the Department of Justice may take with regard to enactment of the bill.

The bill terms itself the "Public Disclosure of Lobbying Act of 1975." It is designed to enable Government officials to evaluate expressions by individuals and groups by requiring public disclosure of the identity, expenditure, and activities of those persons who, for consideration, engage in organized efforts to persuade members of the legislative or executive branches of the Federal Government to take specific actions. Each lobbyist, as defined in the bill, is required to file a notice of representation with the Federal Election Commission not later than 15 days after first becoming a lobbyist. The bill prescribes the contents of the notices of representation. Persons covered

by the bill are required to keep records as detailed in the bill which are available for inspection by the Commission, and to file periodic reports with the Commission. The bill grants the Commission certain powers to enforce its provisions, and prescribes the duties of the Commission. The bill provides criminal penalties for violation of its provisions. It repeals the Federal Regulation of Lobbying Act, 2 U.S.C. 261 et seq. Section 7 of the bill requires all officials and employees of the executive branch in grades GS–15 or above or in executive levels under title 5 of the United States Code, or who are designated as being responsible for making or recommending decisions affecting policymaking in the executive branch to record all contacts with outside parties who express an opinion of the policymaking process. The bill prescribes the contents of such records and prescribes criminal sanctions for violations thereof.

The Federal Regulation of Lobbying Act (Act), the existing law regulating the activities of lobbyists, requires lobbyists regulated by that Act to register and file detailed reports which the Secretary of the Senate and Clerk of the House of Representatives. The criminal provisions of the Act are enforced by the Department of Justice.

This Department does not administer the Act and has no experience working with it. This information is, we believe, within the knowledge of the Department of Justice. We are, therefore, unable to determine the need for the changes embodied in H.R. 1734.

However, section 7 of the bill causes us some concern. While this Department believes that the strict control of the activities of lobbyists may be necessary to assure public confidence in the decisionmaking processes of the executive branch, section 7 of the bill does not limit communications between lobbyists and officers and employees of the executive branch. Instead the terms of section 7 apply to any oral or written communication received from "outside parties".

To require officials as provided in section 7 of the bill to record all communications received from any member of the public and to impose a criminal penalty for failure to comply with the terms thereof would, we believe, be unnecessarily burdensome on such officials.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD A. ASHWORTH,
Deputy Under Secretary.

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., September 10, 1975.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your requests for the views of the Department of Defense on H.R. 15 and H.R. 1734, 94th Congress, identical bills "To regulate lobbying and related activities." The Secretary of Defense has assigned to the Department of the Air Force the responsibility for expressing the views of the Department of Defense on these bills.

The purpose of H.R. 15 and H.R. 1734 is to regulate lobbying by requiring a lobbyist to (1) file with the Federal Election Commission; (2) maintain detailed records; and (3) file reports with the Federal Election Commission. In addition, section 7(a) of the bills would require all officials and employees of the executive branch GS–15 or above in the General Schedule, or in any of the executive levels under title 5 of the United States Code to record all outside contacts received, either oral or written, expressing an opinion with respect to the policymaking process. Further, section 7(c) of the bill requires the establishment of an indexing system to record all outside contacts as defined in section 7(a).

As to the merits of the legislation as a whole, the Department of Defense defers to the Office of Management and Budget, since that office is responsible for the management practices and requirements of the Executive Branch of the Government, and to other interested Federal agencies.

However, it is envisioned that certain aspects of these bills would have an adverse impact on the Department of Defense as follows:

First, section 7(a) of H.R. 15 and H.R. 1734 would require the reporting of all outside contacts made by all employees GS–15 or above. This would be extremely burdensome if the "policymaking process" as defined by section 2(2) is interpreted broadly. Further, section 7(c) would result in the creation of a costly administrative system to record and index all outside contacts. It is felt that the reporting requirements of section 7 would not in reality accomplish the purpose of reducing ex parte contacts. It would appear that the other reporting requirements for lobbyists found in sections 3, 4, and 5 would be sufficient to accomplish the objective of the legislation.

Second, section 7 of H.R. 15 and H.R. 1734 would interfere with communications between union and management officials as set forth in Executive Order No. 11491, as amended, which established a labor relations program for Federal employees. One of the fundamental objects of the labor relations program is to permit collective action through voluntary organizations for the purpose of influencing the policymaking process. As the bill is written, sections 2(1) and 2(7) would include unions at both the national and local levels. Also, sections 2(2) and 2(9) would encompass the collective bargaining and consultation activities of unions under Executive Order No. 11491. Since many of the representations under the program are either oral or are written representations initiated by the unions, the exclusion contained in section 2(9)(A) would affect only a small portion of the communications between union and management officials. The Department of Defense labor relations program under Executive Order No. 11491 does not reflect a need for treatment of the activities of the program in the manner contemplated by H.R. 15 and H.R. 1734. The activities of this program are conducted in an open manner and imposition of the strictures of this proposal would tend to inhibit rather than improve the effectiveness of the program. Therefore, it is recommended that section 2(9) of the bill be amended by adding the following:

"(D) any communication by a union in fulfillment of its obligations and responsibilities under the labor-management relations program for Federal employees; or

"(E) any communication by an organization representing the interests of Federal employees which deals with matters of concern to those employees and which are related to their employment."

In summary, the Department of Defense, recommends that (a) section 7 of H.R. 15 and H.R. 1734 be deleted since the administrative costs are too great plus the fact that the remaining sections of the bill are more than adequate to accomplish the objectives of the legislation; and that (b) section 2(9) be amended so that the labor relations program established by Executive Order No. 11491 will not be jeopardized.

At this time we cannot project the additional cost which would result from the enactment of H.R. 15 and H.R. 1734. However, increased administrative costs would be incurred by the Department of Defense, as well as by other Federal agencies, if the bills should be enacted in their present form.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

DAVID P. TAYLOR,
Assistant Secretary of the Air Force,
Manpower and Reserve Affairs.

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., September 10, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on H.R. 778, 94th Congress, a bill "To regulate lobbying and related activities" and H.R. 6864, 94th Congress, a bill "To regulate lobbying of the legislative and executive branches of the Federal Government." The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense on these bills.

H.R. 778 and H.R. 6864 take very similar approaches to their same general purpose, the regulation of lobbying. Both bills require lobbyists to retain certain records of lobbying and to file a notice of representation at or near the commencement of lobbying and periodic reports thereafter on his lobbying activity. The notices and reports would be filed with a commission—a new Federal Lobbying Disclosure Commission in the case of H.R. 778 and the existing Federal Elections Commission in the case of H.R. 6864. The notices and reports filed with the commission would be available for public inspection. Both bills vest some investigatory and regulatory power in the commission but H.R. 778 authorizes the commission to enforce provisions of the Act in the courts while H.R. 6864 only authorizes the Attorney General at the request of the commission to seek an order of the court to enforce compliance with the act or a regulation thereunder.

H.R. 778 and H.R. 6864 would significantly affect the Department of Defense only in the area of labor-management relations. Otherwise,

the duties imposed and powers conferred by either bill would be primarily upon the lobbyists and the commission and only incidentally if at all upon personnel or operations of the Department of Defense.

H.R. 778 and H.R. 6864 would interfere with communications between union and management officials as set forth in Executive Order No. 11491, as amended, which established a labor relations program for Federal employees. One of the fundamental objects of the labor relations program is to permit collective action through voluntary organizations for the purpose of influencing the policymaking process. Each bill as written would include unions at both the national and local levels and would encompass the collective bargaining and consultation activities of unions under Executive Order No. 11491. Limitations on the applicability of either bill would affect only a small portion of the communications between union and management officials. The Department of Defense labor relations program under Executive Order No. 11491 does not reflect a need for treatment of the activities of the program in the manner contemplated by H.R. 778 and H.R. 6864. The activities of this program are conducted in an open manner and imposition of the strictures of this proposal would tend to inhibit rather than improve the effectiveness of the program. Therefore, it is recommended that section 2(9) of H.R. 778, or 2(8) of H.R. 6864, if favorably considered, be amended by adding the following:

"(D) any communication by a union in fulfillment of its obligations and responsibilities under the labor-management relations program for Federal employees; or

"(E) any communication by an organization representing the interest of Federal employees which deals with matters of concern to those employees and which are related to their employment."

Accordingly, subject to the amendments recommended above, the Department of the Air Force, on behalf of the Department of Defense, defers to other agencies more directly concerned as to the merits of H.R. 778 and H.R. 6864.

This report has been coordinated with the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

DAVID P. TAYLOR,
Assistant Secretary of the Air Force,
Manpower and Reserve Affairs.

U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,
Washington, D.C., September 12, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: The Energy Research and Development Administration is pleased to respond to your requests for our views on H.R. 15 and H.R. 1734, identical bills "[t]o regulate lobbying and related activities."

While the purpose of these bills is commendable, we believe their scope is so broad as to be unmanageable. In addition, we question the value of the requirements placed on officials and employees of the executive branch concerning record-keeping and public inspection.

The enclosed Staff Report details the above points and recommends changes in the bills.

The Office of Management and Budget has advised us that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

R. TENNEY JOHNSON,
General Counsel.

Enclosure: Staff Report.

STAFF REPORT, H.R. 15 AND H.R. 1734

The subject identical bills are aimed at regulating lobbying and related activities. Their thrust is several-fold: (1) Comprehensive statements as to planned actions and employment financial terms and conditions, to be filed with the Federal Election Commission by each lobbyist as defined in the bills; (2) the keeping of records and the filing of periodic reports by lobbyists; (3) detailed record-keeping by middle- and high-level personnel of the executive branch, and certain other executive branch employees, as to all oral and written communications received from outside (non-Federal) parties pertaining to the policy-making process in the executive branch.

In addition the Federal Election Commission is given broad powers and duties in carrying out the purposes of the bills, regarding both procedures and enforcement.

Finally, the bills would establish criminal penalties for violation of their provisions and would repeal certain existing Federal legislation regulating lobbying.

We believe that the bills are unmanageable in the light of the broad definition of "policymaking process" in Section 2(2). The scope of the term in regard to Congressional action is confined to "any bill, resolution, or other measure." In the case of executive branch policymaking the term includes "any rule, adjudication, or other policy matter." Without further refinement, the term "policy matter" can be extremely broad, covering a wide range of activities at several tiers in both the headquarters and field installations of an agency. In view of the criminal penalties which could be imposed under section 10 for violation of the bills' requirements, we would suggest deletion of the "policy matter" requirement or that its compass at least be clearly defined.

Even if the cited definition were to be narrowed, however, we think the value of the mandatory record-keeping and public inspection, to be imposed by Section 7 on officials and employees of the executive branch, would be significantly less than the administrative burden which would be placed on such personnel. Since the bills in any event would require lobbyists to report fully on attempts to influence the policymaking process in both Congress and the executive branch, we do not believe there is a necessity for additional corroborative type reports from executive branch personnel.

In summary, we recommend: (1) Deletion of Section 7 of the bills, with conforming amendments elsewhere; (2) A narrowing of the definition of "policymaking process," as discussed above, to make the remaining provisions of the bills manageable.

As a final observation, it is noted that the definition of "lobbyist" in Section 2(10) is inapplicable to one who does not, among other things, meet a minimum level of $500 each for income and for expenditures for lobbying in one of four consecutive quarters. While this limitation would exclude coverage of lobbyists willing to operate on such a part-time basis, it is difficult to estimate the effect of this provision in practical terms.

FEDERAL MARITIME COMMISSION,
Washington, D.C., September 23, 1975.

Hon. PETER RODINO,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Federal Maritime Commission on H.R. 15, a bill "To regulate lobbying and related activities."

In attempting to regulate the lobbying activities of the executive and legislative branches of the federal government, H.R. 15 would be applicable to the Federal Maritime Commission by its definitions of "Federal officer or employee" and "the policymaking process." Procedurally, Section 3 of H.R. 15 would require a "lobbyist" to file a notice of representation with the Federal Election Commission. The "lobbyist," in maintaining records required by Section 4 would, based on such records, file reports with the Federal Election Commission on a quarterly basis. Section 5(5) directs the "lobbyist" to identify in his reports "each Federal officer or employee with whom the reporting lobbyist communicated during the period covered in order to influence the policymaking process." Section 7(a) then provides that: "All officials and employees of the executive branch in grades GS–15 or above in the General Schedule, or in any of the executive levels under title 5 of the United States Code, or who are designated by any person to whom this subsection otherwise applies as being responsible for making or recommending decisions affecting the policymaking process in the executive branch, shall prepare a record of each oral or written communication received directly or by referral from outside parties expressing an opinion or containing information with respect to such processes. The records shall be in such form and contain such information as the Commission shall prescribe, including —."

The section goes on to prescribe the form and content of the above record-keeping and requires such records be indexed by subject matter and when applicable, docket number. The records must then be made available for public inspection at the agency. Section 10(d) contains the criminal penalties for violation of Section 7 by any "Federal officer or employee."

The Federal Maritime Commission is a small agency of approximately 300 persons. We are charged with certain responsibilities under Reorganization Act No. 7 of 1961 in relation to the foreign and domestic waterborne commerce of the United States. The functions in our statutory mandates from the Shipping Act of 1916, the Merchant

Marine Act of 1920, and the Intercoastal Shipping Act of 1933 include control of rates, services, practices, and approval of the agreements of common carriers by water. Rules and regulations in the area of the foreign shipping trades and investigations of discriminatory rates, charges, classifications and practices in those trades are a major function of this Commission. Additional statutory responsibilities exist in the areas of water pollution and cruise vessels.

The Federal Maritime Commission recognizes the intent of the sponsors and advocates of H.R. 15, but we respectfully urge the deletion of Section 7 thereof. The heavy duty placed on the federal employee by Section 7, especially in a small agency such as ours, would we fear result in a situation where lobbyist record-keeping would occupy an unreasonable percentage of the employee's time instead of the vital task of serving the public. The cost of such detailed record-keeping would be, as we have advised the Office of Management and Budget, in the area of $250,000–$275,000 annually.

Accordingly, we would urge the Committee not to require this Commission and other agencies of our government to assume burdensome tasks, which would preclude a civil servant from performing his duties on a full time basis.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

HELEN DELICH BENTLEY, *Chairman.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

FEDERAL REGULATION OF LOBBYING ACT

AN ACT

To provide for increased efficiency in the legislative branch of the Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

That (a) this Act, divided into titles and sections according to the following table of contents, may be cited as the "Legislative Reorganization Act of 1946":

TABLE OF CONTENTS

* * * * * * *

[TITLE III—REGULATION OF LOBBYING ACT

[Sec. 301. Short title.
[Sec. 302. Definitions.

* * * * * * *

[TITLE III—REGULATION OF LOBBYING ACT

[SHORT TITLE

[SEC. 301. This title may be cited as the "Federal Regulation of Lobbying Act".

[DEFINITIONS

[SEC. 302. When used in this title—

[(a) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

[(b) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure.

[(c) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

[(d) The term "Clerk" means the Clerk of the House of Representatives of the United States.

[(e) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.

[DETAILED ACCOUNTS OF CONTRIBUTIONS

[SEC. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of—

[(1) all contributions of any amount or of any value whatsoever;

[(2) the name and address of every person making any such contribution of $500 or more and the date thereof;

[(3) all expenditures made by or on behalf of such organization or fund; and

[(4) the name and address of every person to whom any such expenditure is made and the date thereof.

[(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding $10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at

least two years from the date of the filing of the statement containing such items.

[RECEIPTS FOR CONTRIBUTIONS

[SEC. 304. Every individual who receives a contribution of $500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received.

[STATEMENTS TO BE FILED WITH CLERK OF HOUSE

[SEC. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing—

[(1) the name and address of each person who has made a contribution of $500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of $500 or more to such person since the effective date of this title;

[(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

[(3) the total sum of all contributions made to or for such person during the calendar year;

[(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of $10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

[(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

[(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

[(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

[STATEMENT PRESERVED FOR TWO YEARS

[SEC. 306. A statement required by this title to be filed with the Clerk—

[(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its nonreceipt;

[(b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

[PERSONS TO WHOM APPLICABLE

[SEC. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

[(a) The passage or defeat of any legislation by the Congress of the United States.

[(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

[REGISTRATION WITH SECRETARY OF THE SENATE AND CLERK OF THE HOUSE

[SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or perodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

[(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

[REPORTS AND STATEMENTS TO BE MADE UNDER OATH

[SEC. 309. All reports and statements required under this title shall be made under oath, before an officer authorized by law to administer oaths.

[PENALTIES

[SEC. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than $5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

[(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

[EXEMPTION

[SEC. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.]

DISSENTING VIEWS OF HON. DON EDWARDS

I am writing these dissenting views not because I am opposed to lobbying disclosure reform legislation. Doing public business in public is a healthy way to prevent or correct governmental malfeasance. But legislation to require such behavior should be drawn so as to target accurately abuses, prevent corrupt practices and future malfeasance, and at the same time scrupulously respect constitutional rights.

Evidence in the hearings alleged serious patterns of abuse by lobbyists in Washington. They are said to provide free trips and presents to Members of Congress, to staffers and to executive department employees. Members of Congress and federal officials leave the government for plush jobs in companies affected by legislation on which they have worked. Lobbyists in Washington continue to make substantial contributions to Members' campaign funds.

Dinners, football and theater tickets are pressed upon congresspersons and employees. Trade groups employing lobbyists offer generous honoraria to committee members handling legislation affecting these organizations.

For many years my own state of California faced a similar problem, except that it was worse. The powerful lobbyists were referred to as "the third House". State Legislators and well-financed lobbyists lived and worked together in a club-like atmosphere made possible by lavish meals, entertainment, trips and gifts paid for out of the lobbyists' expense accounts. These lobbyists also brokered many of the campaign contributions. Their influence was immense.

In June of 1974, the voters of California by a two-to-one margin passed the Political Reform Act of 1974, the most important provisions of which are those regulating lobbyists. The effects of the law have been significant and beneficial, bearing directly on many of the evils I described earlier.

The key provisions of the California law place a limitation of $10 per month on a lobbyist may spend in making or arranging gifts, including food and beverage, for legislative and agency officials, and lobbyists are prohibited from making or arranging campaign contributions to any candidate for State office or any elected State official.

Lobbyists are required to file regular reports, listing any expenditure, however small, which benefits public officials. Unlike H.R. 15, many expenses may be lumped together in several overhead categories to keep the paperwork at a minimum.

H.R. 15 is a lobby disclosure bill only, placing no limits on the amounts which lobbyists may spend on decision makers. As the overwhelming majority of non-congressional witnesses point out, it would run counter to the constitutional prohibition that Congress may not abridge "the right of the people * * * to petition the government for a redress of grievances".

The reporting requirements of the bill would not be burdensome to rich corporate lobbying organizations with large staffs of bookkeepers

and secretaries. But these requirements could be extremely burdensome to grassroot groups of concerned citizens who band together to send someone to Washington on a particular issue.

As Dr. Stahr of the Audubon Society testified: "But this legislation would absolutely drive us crazy, and I say this almost literally. It would have a very bad effect on literally hundreds—not just dozens—but literally hundreds of charitable and educational organizations whose principal activity is something other than influencing Federal policy; but which, incidentally, may well from time to time have a legitimate interest in doing so."

In conclusion, H.R. 15 in its present form should not be enacted. The extensive reporting requirements will fall most heavily on those least able to afford it, the low budget groups, the community grassroots lobbyists, often organized on an ad hoc basis to address a single issue. They may well be discouraged by the mountains of paperwork required. Corporate lobbyists on the other hand, would not be discouraged, having plenty of staff available, the costs tax deductible.

I will support with enthusiasm a lobbying bill designed to eliminate the specific evil mentioned earlier in these views. This has been accomplished in the California legislation, and that is the kind of bill we should work towards.

DON EDWARDS.

DISSENTING VIEWS OF HON. JOHN F. SEIBERLING

H.R. 15 is a well-intentioned bill, but it is insensitive to the fundamental First Amendment right of every person, organization and business to communicate directly with the Government with an absolute minimum of interference. I would enthusiastically support a lobbying disclosure bill which would not "chill" or abridge the exercise of First Amendment rights. Unfortunately, H.R. 15 in its present form is not such a bill.

By the admission of its own proponents, this bill regulates and affects activities which are protected by the First Amendment. The First Amendment states that "Congress shall make no law abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The courts have consistently recognized lobbying as a First Amendment right. *United States.* v. *Harriss*, 347 U.S. 612 (1954); *Liberty Lobby* v. *Pearson*, 390 F.2d 489 (1968).

No one can reasonably argue with the proposition that the existing Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.) is inadequate and ineffective. It should be replaced by a law that gives protection to the public's right to know what groups and interests are attempting to influence Governmental action. I strongly support that objective. But I believe with equal fervor that the solution must not be one that replaces a notoriously ineffective statute with one that abridges both individual and organizational First Amendment rights. In my opinion, this bill would, in many instances, impose such a substantial burden on the exercise of these rights as to impair their very use.

H.R. 15 requires that only organizations, not individuals, register and report their lobbying activities. However, the threshhold test to determine whether an organization is with the scope of the bill is low, and thus is easily met. For example, if a company, a union, a civic organization, or a university has only one employee who spends one-fifth of his time engaged in attempts to influence legislation or other Governmental action, then it must register and report under the bill. Time spent by an employee making an oral or written communication to a Federal officer or employee counts towards the 20% threshhold, as does time spent in "preparing and drafting" any such communication.

A sound lobbying reform bill should avoid creating time-consuming, unnecessarily complex and costly record-keeping and reporting requirements for those organizations which may be classified as lobbyists. Congress should be especially careful to minimize the burdens on organizations seeking to exercise their First Amendment rights, particularly in an area such as this where an excessive burden may well deter or even preclude the exercise of those rights.

Nonetheless, the record-keeping and reporting requirements of H.R. 15 would significantly inhibit the public's participation in the demo-

cratic process. Because an organization is compelled to report all its lobbying activities if any of its employees spends 20% of his time on such activities, it is incumbent on virtually every organization to maintain elaborate time records for each of its employees who spend *any* time on such activities. The very possibility of a GAO audit would make any prudent organization maintain costly and extensive records.

The time and expense needed to comply with the provisions of H.R. 15 would have a specially chilling effect in the case of smaller organizations and those which are not well-financed. Such organizations might well have to make the choice between costly compliance and foregoing the exercise of their First Amendment rights. The likely result would be decreased public participation in the Government's decision-making process by public interest organizations, grass-roots citizens groups, and small businesses.

As I perceive the likely effects of H.R. 15, the most serious consequence would be the end of any participation in the Government's decision-making process by many public charitable, religious, scientific and educational organizations which are tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

By law, these public charitable organizations already are forbidden from devoting any substantial part of their activities to attempting to influence legislation. They are also required to submit full annual reports on their activities to the Internal Revenue Service.

However, unlike other organizations which would be subject to the record-keeping and registration requirements of H.R. 15, public charitable organizations would be unable to pass along the costs of complying with H.R. 15 or deduct them as a business expense. Instead, public charitable organizations would have to absorb the entire cost of compliance, and they would thus have that much less money to spend on their principal activities.

A number of major 501(c)(3) membership organizations have estimated that it would cost them well over $100,000 to comply with the provisions of H.R. 15 every year. Of course, the cost of compliance for the smaller public charitable organizations such as a small university or a research foundation would also be substantial. Merely establishing the formal record-keeping and accounting system needed to comply with H.R. 15 would be expensive. Also, the very character of many public charities and grass-roots organizations would be changed by making them centralize their accounting, record-keeping and reporting procedures.

We are told by the supporters of H.R. 15 and by the IRS that a public charitable organization will not lose its 501(c)(3) status merely because it registers as a lobbying organization. But the constant threat of losing that status makes 501(c)(3) organizations overly cautious about engaging in lobbying activities. By definition, these public charitable organizations are more concerned with their charitable, religious, scientific and educational work than they are with lobbying. If to the existing risks are added the costs and burdens of reporting under H.R. 15, many such organizations will conclude that they should not lobby at all.

Although the Committee did amend H.R. 15 to exempt 501(c)(3) organizations from having to report any contributor when they report lobbying activities under the bill, the Committee defeated another

amendment which would have exempted such organizations from any registration and reporting requirement so long as no significant part of their activities was devoted to lobbying. Adoption of such an amendment would have significantly eliminated one of the most serious restrictions on the exercise of First Amendment rights by charitable organizations, and would have removed one of my chief objections to the bill.

In our democratic system, the full exchange of *all* ideas and viewpoints is deemed to be essential for enlightened decision-making by Congress and the rest of the Government. In fact, lobbying by citizens' groups and organizations is probably the most effective safeguard we now have against rampant legislation and Governmental action favoring special interest groups. I, for one, am unwilling to impair this useful protection. Such a sacrifice of this protection would be precisely what would result, unintentionally but inevitably, from the enactment of H.R. 15 in its present form.

Three brief passages from important Supreme Court decisions are especially relevant to the consideration of H.R. 15 by the House:

> In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action." *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 461 (1958).
>
> When it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification." *Bates* v. *City of Little Rock*, 361 U.S. 516, 525 (1960).
>
> Congress has traditionally exercised extreme caution in legislating with respect to problems relating to the conduct of political activities, a caution which has been reflected in the decisions of this Court interpreting such legislation." *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127, 141 (1961).

In my opinion, H.R. 15 neither reflects the extreme caution needed nor bears the reasonable relationship to the achievement of the asserted Governmental purpose to justify House passage in its present form. While it may be possible, by the adoption of appropriate amendments, to eliminate the Constitutional infirmities in the bill, I believe that—until and unless such amendments are adopted—the bill represents a dangerous and unjustified interference with fundamental First Amendment rights, and should be opposed.

JOHN F. SEIBERLING.

DISSENTING VIEWS OF CHARLES E. WIGGINS

The proposed "Public Disclosure of Lobbying Act of 1976" is a regulation of speech. It raises two fundamental questions: Does the Act, taken as a whole, unconstitutionally abridge freedom of speech or the right of the people to petition the government for a redress of grievances? And, even if the Act passes constitutional muster, is it wise to exercise governmental power to regulate these sensitive First Amendment values in the manner contemplated by the legislation?

On the first question, I am unsure; but as to the second, I have no hesitancy in concluding that H.R. 15 should be rejected as a matter of policy.

I

In our country, speech is a precious and protected commodity. It may be prohibited or burdened in only the rarest of circumstances. Protection from improper governmental interference with the freedom to think, to associate with others, to communicate one's views, and to petition government is not a special privilege accorded some: it is a right which may be claimed and exercised unashamedly by individuals and organizations, by the "responsible press" and by the radical pamphleteer, by the richest and the poorest, the largest and the smallest among us.

Given the fundamental nature of this constitutional guarantee, it is difficult to assign a greater value to the exercise of one First Amendment right over another. But few would question that the target of H.R. 15 is speech of the most sensitive character. Oral and written communications by persons or organizations with, or intended to influence, governing officials is necessary to the workings of representative government.

It is against this background, that an analysis of the pending legislation must be undertaken.

The bill does not prohibit speech directly. Were the Congress so ill-advised as to prevent "lobbying" out of a fear for its excesses, the constitutional question would be easily resolved.

The thrust of the bill, however, is regulation rather than prohibition. It classifies lobbyist and lobby activities (about which more will be said later) and subjects those organizations and activities caught by the definitional language to comprehensive reporting and disclosure requirements.

Regulation of speech, like its prohibition, may be unconstitutional if it burdens the freedom excessively. Some regulations, it has been said, may have a "chilling effect" upon the right itself. The dividing line between those regulations which may be appropriate and those which are not is whether the practical effect of the regulation tends to inhibit freedom of expression unreasonably. Unfortunately, the line is not a bright one. The Supreme Court has properly held regulations of speech up to a standard of strict scrutiny, and we should do no less, in determining whether the line has been trespassed.

A survey of the regulatory burden imposed by this legislation is thus essential.

If the bill is enacted, every organization in the land (unless specifically excluded from its coverage) must:

1. Maintain separate written records of every expenditure made for the retention of another to draft, prepare, or make oral or written communications to a Federal official;

2. Maintain separate time records with respect to every employee who may devote some of his time in drafting, preparing, or making oral or written communications to a Federal official;

3. Monitor the records of such communications by employees or retainers of affiliates of such organizations.

The necessity for such recordkeeping by *all* non-exempt organizations is occasioned by the separate reporting burden which is imposed upon only those organizations which meet the statutory threshold. To know whether a duty to report will arise requires every organization to maintain an elaborate, and I believe, costly record system with respect to every communication with Federal officials.

If a non-exempt organization meets the statutory threshold of activity, it must:

1. Register with the Comptroller General;

2. Report, at least, the following:

(*a*) its identity;

(*b*) a general description of the methods by which it arrives at its position on any issue;

(*c*) the identity of any person retained to, and any employee who devotes more than 20% of his time in, drafting, preparing, or communicating with a Federal official;

(*d*) the total expenditures, in excess of the threshold, in retaining others to communicate with Federal officials;

(*e*) an itemized statement of all expenditures made to or for the benefit of any Federal official or employee and the names of such officials or employees;

(*f*) an itemized statement of all expenditures for a reception or dinner for a Federal official, if the total cost of the event exceeds $500 (a fact presumably not within the knowledge of the reporting organization);

(*g*) the total amount paid to a person retained to draft, prepare, or make communications with a Federal official, and the total amount paid to an employee who engages in such activities, with an allocation of the employees income as it relates to such activities;

(*h*) a description of the 25 issues upon which the reporting organization spends the greatest proportion of its efforts;

(*i*) a general description of any other issues upon which a lobby effort was made;

(*j*) a description of all fund solicitations initiated or paid for by the reporting organization, including the subject matter of the solicitation "where such solicitations reached or could be reasonably expected to reach, in identical or similar form, 500 or more persons, or 25 or more officers or directors, 100 or more employees, or 12 or more affiliates."

(*k*) the disclosure of each "direct business contact" (as defined) with a Federal officer or employee;

(*l*) the dues or contribution schedule of the reporting organization; and

(*m*) the name of any contributor who makes a contribution in excess of the contribution schedule, if such contribution exceeds $2,500 and the excess contribution is greater than 1% of the total dues or contributions to the reporting organization.

The foregoing reporting requirements (which is not an exhaustive listing) will obviously require extensive record-keeping by *all* non-exempt organizations, because the duty to report is a lurking potential depending upon the level of future activity.

In addition to this rather elaborate scheme of regulation, a non-exempt organization must:

1. Retain all such records for a period of 5 years;
2. Endure the exposure of all such reports filed to public scrutiny; and
3. Submit to criminal and/or civil penalties for violations of the Act.

It is clear beyond question that a burden of some magnitude is levied upon those non-exempt organizations choosing to exercise their First Amendment right to communicate with Federal officials. To be sure, the burden can be avoided entirely, either by not speaking at all, or by curtailing speech to a level below the statutory threshold. The ultimate question we must decide is whether there is a significant risk that some organizations will forsake their First Amendment rights to avoid the burden of this legislation. It is a judgment call, but I, for one, cannot but conclude that some organizations will determine that the price of speech has been made too high.

II

Closely related to the question of whether the duties imposed upon a speaker may have a chilling effect upon his decision to speak, is the rationality of the legislative scheme adopted to correct the perceived public evil. Both are questions of constitutional dimensions when expression is the target of the legislation.

Normally, and quite properly, courts give wide latitude to the legislature's discretion in choosing a proper response to matters within its jurisdiction. But there are exceptions to the normal rule. Where important individual rights given specific constitutional protection may be eroded, a higher duty of legislative justification is called for, and legislative enactments are accordingly subjected to special scrutiny. Potential limitations upon speech fall into this category. We, therefore, must examine the reasonableness of the pending proposal in the light of the purposes to be served by it.

"Lobbying" is widely regarded as a pejorative term. It conjures in the mind of many a vision of a Herblock cartoon depicting legislators dancing to the tune of fat representatives of corporate interests who dispense dollars and other favors in exchange for votes which are contrary to the public interest. But we know, even if the public does not, that such a perception is simply false. Most lobbying activities involve a proper advocacy of a private point of view. There is nothing more sinister in doing so than the private advocacy of a point of view by a litigant to a judge.

The evil is not the lobby effort. It is rather the conduct of the public official who reacts to that effort by failing to do that which the public interest requires. It must be noted that this bill only deals with the real problem tangentially. Public disclosure, it might be argued, will subject the pressures placed upon a Federal official to public scrutiny, thereby discouraging the weak from yielding to temptation. If such be the justification for this legislation, however, it falls far short of its goal.

It has been my observation that the effectiveness of lobbying is closely related to the magnitude of the political penalty or benefit which the lobbyist is able to inflict or bestow upon the one lobbied. No one has a greater "clout" than the individual voter, or those organizations able to influence large blocks of voters. Carefully excluded from this legislation, however, are the most effective lobbyists of all: Individual constituent communications, all forms of media expression, the political parties, and other units of government, to name only a few. For a variety of reasons, H.R. 15 is highly selective in its impact and, as a result, its intended benefits are largely illusory if it is to be justified on the basis of public disclosure of lobby activities which may turn a Federal official away from the public interest. By exacting a heavy price upon free speech, we are asked to make only modest inroads upon the evil of lobbying. We have, I fear, failed in our duty to draft a statute narrowly which targets with precision upon the supposed evils.

III

There are several other troublesome issues which further burden a bill already heavily baggaged.

1. The bill is unclear in its application to intragovernmental communications between Federal officials. Clearly exempt are those communications which are requested, or are submitted for the record. But this exempt category is only the tip of the communication iceberg. Many letters by or to executive agencies, congressional committees and congressmen themselves (who are employees of an organization) are initiated for the purpose of influencing the official action of others.

2. Although the bill disclaims any interest in the names of the total membership of a reporting organization, it does require the identification of specific members who contribute sums in excess of the organization's regular dues schedule. It is a familiar rule of constitutional law that the First Amendment freedom of association precludes forced disclosure of the membership lists of an organization. The rule, of course, is not absolute.

Freedom of association is a liberty which may be enjoyed both by the individual member and by the organization with which he chooses to associate. The First Amendment is not satisfied by protecting the total membership list from disclosure but compelling the disclosure of the names of select members.

Justification for disclosure of the heavy contributors to organization is not clear. The case is to be distinguished from direct contributions to Federal officials who would know know the identity of contributors and, arguably, be unduly influenced by the large donors. Here, however, the organization stands between the Federal official and the large contributor. The Federal official will normally be un-

aware of the identity of a large contributor to the organization and thus unaffected by his excess contribution.

It also might be argued with some force that any disclosure of contributions, large or small, to lobby organizations should be shielded from a Federal official so that personal considerations do not cloud a judgment on the merits of a point of view expressed by the organization.

Given the uncertain justification for the disclosure of individual names, this provision becomes vulnerable to constitutional attack.

3. "One House veto" of regulations promulgated by the Controller General is authorized by the bill. This issue has been fully debated by the Congress, but the debate has not been resolved by the courts. It must be recognized that the "one House veto" concept is, at present, of uncertain validity, and further burdens this legislation.

IV. CONCLUSION

The Congress in this session has undertaken to enact far-reaching changes in the Political process. "Lobby reform" is but one of these undertakings.

Changes in the Political process must be done with extraordinary caution and restraint, because they are political issues and hence susceptible to political irrationality which is all too common, especially in the election season. Nor are we sufficiently removed from the passions of Watergate to resist destruction institutional "reforms" in its name.

We need to make haste slowly. The Lobby Disclosure Act of 1976 will, if enacted, disturb the relationship of the government to the governed in a way which lessens the power of the latter. We should not tolerate it—as a matter of policy, clearly; as a matter of law, probably.

CHARLES E. WIGGINS.